shall be the responsibility of the producer to see that all necessary entries have been made on the Form AA. Upon timely receipt of Form AA, the New Orleans office will forward the warehouse receipts to a bank designated by the producer with directions to the bank to release the warehouse receipts to the producer upon payment of the loan value of the cotton plus applicable charges and interest. Banks may accept valid cotton export payment certificates issued under the cotton export program in payment of all or part of the amount due on CCC loans on upland cotton. If payment is not effected within five business days after the receipts are received by the bank or prior to the time at which the loan matures and CCC acquires the cotton, which ever is the earlier, the bank will return the warehouse receipts to the New Orleans office. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the warehouse receipts are sent must be paid by the person redeeming the cotton.

(Secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 103, 401, 63 Stat. 1051, as amended; 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1444, 1421)

Effective date. This amendment shall become effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C. on November 27, 1963.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 63-12507; Filed, Dec. 2, 1963; 8:54 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket C-618]

PART 13—PROHIBITED TRADE PRACTICES

McCrory Corp.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections;* § 13.15-235 *Producer status of dealer or seller;* § 13.15-235(m) *Manufacturer.* Subpart—Using misleading name—vendor: § 13.2445 *Producer or laboratory status of seller.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, McCrory Corporation, New York, N.Y., Docket C-618, Nov. 6, 1963]

Consent order requiring a New York City operator of numerous stores under the name "Gulf Mills Discount Department Stores" in various states, to cease using the word "Mills" in the stores' name since it owned no mill or factory but bought from manufacturers and others the clothing and other merchandise it offered for resale.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent McCrory Corporation, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of clothing or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Mills" or any other word of similar import or meaning in or as a part of respondent's corporate or trade name, or representing in any other manner, that respondent is the manufacturer of the clothing and the other merchandise sold by it unless and until respondent owns and operates, or directly and absolutely controls, the manufacturing plant wherein such clothing or other merchandise is made.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: November 6, 1963.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 63-12476; Filed, Dec. 2, 1963; 8:47 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

[Docket No. R-228; Order 272]

PART 11—ANNUAL CHARGES

Miscellaneous Amendments

NOVEMBER 20, 1963.

We are concerned here with amendments to § 11.20 and § 11.31 of Subchapter B, Part 11 of the Commission's regulations under the Federal Power Act (18 CFR 11.20) which were proposed in the amended notice issued herein on August 27, 1963.

Section 11.20 would be amended so as to base the assessment of annual charges for licenses heretofore or hereafter issued for projects of more than 2,000 horsepower installed capacity (other than those issued to State or municipal licensees) upon the actual costs of administering Part I of the Act, except those costs associated with administration of the Act in regard to licenses issued to State and municipal licensees, licenses for projects of not more than 2,000 horsepower installed capacity and those minor part licenses for which the charges have been waived in whole or in part under section 10(i) of the Act. The assessment of annual charges shall be in the proportion that the annual charge factor for each such license bears to the total of the annual charge factors under all outstanding licenses. The annual charge factor shall include components based upon both project capacity and energy generated.

Section 11.31 would be amended so as to extend the period for payment of all annual charges by licensees (except charges for headwater benefits) from 30 days to within 45 days of rendition of a bill therefor by the Commission.

General public notice of this proposed rule making was given in the FEDERAL REGISTER on August 31, 1963 (28 F.R. 9648).

In commenting on the proposed amended regulation, most of the licensees reporting took the position that licenses may be altered only by mutual agreement of the licensee and the Commission, unless otherwise provided in the license, and this was especially so in connection with licenses issued prior to the 1935 amendment of the Federal Water Power Act. Some stated that the proposed amended regulation provides no ceiling as to the assessment which may be imposed; that it does not describe how costs are to be determined initially; and that it does not specify the basis for the allocation of such costs as between public and private projects. It appeared to one licensee that the proposed regulation will reasonably apportion, between capacity and energy, the annual charges involved.

No comments respecting the proposed amendment to § 11.31 were made.

We have considered the comments submitted. Section 10(e) of the Act, both prior and subsequent to the 1935 clarifying amendments, provides that "the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of administration" of Part I of the Act. The above quoted terms and conditions are expressly made part of licenses issued both prior and subsequent to 1935. The annual assessment to a given non-public licensee under the proposed amended regulation will include charges in relation to the administrative costs incurred by the Commission under Part I of the Act with respect to non-public projects, except those incurred in connection with minor projects, those which have been waived for minor part licenses under section 10(i) and those fixed by the Commission in determining headwater benefit payments under section 10(f) of the Act.

Upon consideration of the entire record in this proceeding, the Commission finds:

(1) The adjustment of annual administrative charges, as hereinafter provided is necessary and appropriate in carrying out the provisions of the Federal Power Act.

(2) The extension of the period for payment of annual charges by licensees (except charges for headwater benefits), as hereinafter provided, is in the public interest.

Acting pursuant to the authority granted by the Federal Power Act, particularly sections 10(e) and 309 thereof (16 U.S.C. 803(e), 825h), the Commission orders:

(A) Sections 11.20 and 11.31 of the Commission's regulations under the Federal Power Act, Subchapter B, Chapter

I of Title 18 of the Code of Federal Regulations are amended as follows:

1. In § 11.20 delete the introductory paragraph and paragraph (a) and the three subparagraphs thereunder and in lieu thereof insert the following; amend paragraph (c), to read as follows.

§ 11.20 Costs of administration.

Reasonable annual charges will be assessed by the Commission against each licensee to reimburse the United States for the costs of administration of Part I of the Federal Power Act as follows:

(a) For licensees, other than State or municipal, of projects of more than 2,000 horsepower of installed capacity:

(1) A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees, from which shall be deducted such administrative costs allocated by the Commission to minor part licenses for which administrative charges are waived under section 10 (i) of the Act and those fixed by the Commission in determining headwater benefit payments.

(2) For each calendar year the costs of administration determined under subparagraph (1) of this paragraph shall be assessed against each such licensee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses.

(3) The annual charge factor for each such project shall be its authorized installed capacity (horsepower); plus 150 times its annual energy output in kilowatt hours divided by one million.

(4) To enable the Commission to determine such charges annually, each such licensee shall file with the Commission, on or before February 1 of each year, a statement under oath showing the gross amount of power generated (or produced by non-electrical equipment) by the project during the preceding calendar year, expressed in kilowatt hours.

* * * * *

(c) For licensees of projects of 2,000 horsepower or less of installed capacity the charge for costs of administration shall be 5 cents per horsepower, with a minimum charge of $5 per annum for each such license except for those licenses for which administrative charges are waived under section 10(i) of the Act.

* * * * *

2. Paragraph (a) of §11.31 is hereby amended to read as follows:

§ 11.31 Time for payment, protest or request for hearing, penalties.

(a) *Payment of annual charges.* Annual charges shall be paid within 45 days of rendition of a bill therefor by the Commission, except that annual charges for headwater benefits shall be paid within 60 days of rendition of a bill therefor.

* * * * *

(Secs. 10(e) and 309 (16 U.S.C. 803(e), 825h)

(B) The amendments prescribed herein will become effective on January 1, 1964.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 63-12475; Filed, Dec. 2, 1963; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6691]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Miscellaneous Amendments

On December 20, 1962, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under chapter 2 (Self-Employment Contributions Act of 1954) of the Internal Revenue Code of 1954 to conform such regulations to Title II, Social Security Amendments of 1956, the Act of August 30, 1957 (Public Law 85-239), Title IV, Social Security Amendments of 1958, Title I, Social Security Amendments of 1960, and Title II, Social Security Amendments of 1961 was published in the FEDERAL REGISTER (27 F.R. 12621). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as so proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Paragraph (a) of § 1.1402(a)-2, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising the next to last sentence of such paragraph.

PAR. 2. Paragraph (a) of § 1.1402(a)-4, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising the next to last sentence of such paragraph, and paragraph (b) of such section is changed by revising subparagraphs (1) and (2), by deleting subparagraph (3), by renumbering and revising subparagraphs (4), (5), and (6), and by renumbering subparagraph (7) as subparagraph (6).

PAR. 3. Paragraph (c) of § 1.1402(a)-11, as set forth in paragraph 1 of the notice of proposed rule making, is amended by revising the title thereof, by revising the title of subparagraph (1) of such paragraph, and by revising subparagraph (2) (i) and (iii) of such paragraph to correct cross references.

PAR. 4. Paragraph (d) of § 1.1402(a)-13, as set forth in paragraph 1 of the notice of proposed rule making, is revised by changing the word "individual" to "person" wherever it appears in the first sentence of such paragraph.

PAR. 5. Paragraph (b) of § 1.1402(b)-1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising subparagraph (2) (i) of such paragraph, and paragraph (c) of such section is changed by revising the third and fourth sentences thereof.

PAR. 6. Section 1.1402(c)-5, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraphs (a), (b)(1), (c)(1), and (d) of such section to correct cross references.

PAR. 7. Section 1.1402(c)-6, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraph (b) of such section to correct cross references.

PAR. 8. Section 1.1402(e)(1)-1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraph (b) of such section to correct cross references.

PAR. 9. Section 1.1402(e)(3)-1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising the third sentence of paragraph (a)(1) of such section.

PAR. 10. Section 1.1402(f)-1 is amended by revising paragraph (b) to correct cross references.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN, *Commissioner of Internal Revenue.*

Approved: November 20, 1963.

STANLEY S. SURREY, *Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) to the amendments made to the Internal Revenue Code of 1954 by Title II of the Social Security Amendments of 1956 (70 Stat. 839), the Act of August 30, 1957 (Public Law 85-239, 71 Stat. 521), Title IV of the Social Security Amendments of 1958 (72 Stat. 1041), Title I of the Social Security Amendments of 1960 (74 Stat. 924), and Title II of the Social Security Amendments of 1961, such regulations are amended as follows:

PARAGRAPH 1. Sections 1.1401 to 1.1403-1, inclusive, are deleted, and the following regulations are substituted therefor:

Sec.	
1.1401	Statutory provisions; rate of tax on self-employment income.
1.1401-1	Tax on self-employment income.
1.1402(a)	Statutory provisions; definitions; net earnings from self-employment.
1.1402(a)-1	Definition of net earnings from self-employment.
1.1402(a)-2	Computation of net earnings from self-employment.
1.1402(a)-3	Special rules for computing net earnings from self-employment.
1.1402(a)-4	Rentals from real estate.
1.1402(a)-5	Dividends and interest.
1.1402(a)-6	Gain or loss from disposition of property.
1.1402(a)-7	Net operating loss deduction.
1.1402(a)-8	Community income.
1.1402(a)-9	Puerto Rico.
1.1402(a)-10	Personal exemption deduction.
1.1402(a)-11	Ministers and members of religious orders.

§ 1.1401 Statutory provisions; rate of tax on self-employment income.

SEC. 1401. *Rate of tax.* In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1961, and before January 1, 1963, the tax shall be equal to 4.7 percent of the amount of the self-employment income for such taxable year;

(2) In the case of any taxable year beginning after December 31, 1962, and before January 1, 1966, the tax shall be equal to 5.4 percent of the amount of the self-employment income for such taxable year;

(3) In the case of any taxable year beginning after December 31, 1965, and before January 1, 1968, the tax shall be equal to 6.2 percent of the amount of the self-employment income for such taxable year; and

(4) In the case of any taxable year beginning after December 31, 1967, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such taxable year.

[Sec. 1401 as amended by sec. 208(a) Social Security Amendments 1954 (68 Stat. 1093); sec. 202(a), Social Security Amendments 1956 (70 Stat. 845); sec. 401(a), Social Security Amendments 1958 (72 Stat. 1041); sec. 201(a), Social Security Amendments 1961 (75 Stat. 140)]

§ 1.1401-1 Tax on self-employment income.

(a) There is imposed, in addition to other taxes, a tax upon the self-employment income of every individual at the rates prescribed in section 1401. (See paragraph (b) of this section.) This tax shall be levied, assessed, and collected as part of the income tax imposed by subtitle A of the Code and, except as otherwise expressly provided, will be included with the tax imposed by section 1 or 3 in computing any deficiency or overpayment and in computing the interest and additions to any deficiency, overpayment, or tax. Since the tax on self-employment income is part of the income tax, it is subject to the jurisdiction of the Tax Court of the United States to the same extent and in the same manner as the other taxes under subtitle A of the Code. However, this tax is not required to be taken into account in computing any estimate of the taxes required to be declared under section 6015.

(b) The rates of tax on self-employment income are as follows:

Taxable year	*Percent*
Beginning before Jan. 1, 1957	3
Beginning after Dec. 31, 1956 and before Jan. 1, 1959	3.375
Beginning after Dec. 31, 1958 and before Jan. 1, 1960	3.75
Beginning after Dec. 31, 1959 and before Jan. 1, 1962	4.5
Beginning after Dec. 31, 1961 and before Jan. 1, 1963	4.7
Beginning after Dec. 31, 1962 and before Jan. 1, 1966	5.4
Beginning after Dec. 31, 1965 and before Jan. 1, 1968	6.2
Beginning after Dec. 31, 1967	6.9

(c) In general, self-employment income consists of the net earnings derived by an individual (other than a nonresident alien) from a trade or business carried on by him as sole proprietor or by a partnership of which he is a member, including the net earnings of certain employees as set forth in § 1.1402(c)-3, and of crew leaders, as defined in section 3121(o) (see such section and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations)). See, however, the exclusions, exceptions, and limitations set forth in §§ 1.1402(a)-1 through 1.1402(g)-1.

§ 1.1402(a) Statutory provisions; definitions; net earnings from self-employment.

SEC. 1402. *Definitions*—(a) *Net earnings from self-employment.* The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 35) are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss—

(A) Which is considered as gain or loss from the sale or exchange of a capital asset,

(B) From the cutting of timber, or the disposal of timber or coal, if section 631 applies to such gain or loss, or

(C) From the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) Stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) Property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 shall not be allowed;

(5) If—

(A) Any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

(B) Any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) The deduction for personal exemptions provided in section 151 shall not be allowed;

(8) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer) and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 3121(h)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States); and

(9) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) In the case of an individual, if the gross income derived by him from such trade or business is not more than $1,800, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) In the case of an individual, if the gross income derived by him from such trade or business is more than $1,800 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,200, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,200; and

(iii) In the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than $1,800, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) In the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $1,800 and his distributive share (whether or not distributed) of income described in section 702(a)(9) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,200, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be $1,200.

For purposes of the preceding sentence, gross income means—

(v) In the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) In the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

[Sec. 1402(a) as amended by sec. 201 (a) and (c)(4), Social Security Amendments 1954 (68 Stat. 1087, 1089); sec. 201 (e)(2), (g), and (i), Social Security Amendments 1956 (70 Stat. 840–842); sec. 5(b), Act of Aug. 30, 1957 (Pub. Law 85–239, 71 Stat. 523); sec. 103(k), Social Security Amendments 1960 (74 Stat. 938)]

Sec. 201. [*Social Security Amendments of 1956*]. * * *

(m) *Effective dates.* (1) * * *

(2)(A) Except as provided in subparagraph (B), the amendment made by subsection (g) shall apply only with respect to taxable years ending after 1956.

(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of "net earnings from self-employment" (as such term is defined in section 1402(a) of the Internal Revenue Code of 1954), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402(e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402(e) of such Code prior to the date of enactment of this Act, or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402(e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402(e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402(e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of "net earnings from self-employment" (as such term is defined in section 1402(a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402(e), if such taxable year is earlier, and for all succeeding taxable years.

(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

(3) Any tax under chapter 2 of the Internal Revenue Code of 1954 which is due, solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section, for any taxable year ending on or before the date of the enactment of this Act shall be considered timely paid if

payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act.

[Sec. 201(m), Social Security Amendments 1956 (70 Stat. 843)]

§ 1.1402(a)–1 Definition of net earnings from self-employment.

(a) Subject to the special rules set forth in §§ 1.1402(a)–3 to 1.1402(a)–16, inclusive, and to the exclusions set forth in §§ 1.1402(c)–2 to 1.1402(c)–6, inclusive, the term "net earnings from self-employment" means—

(1) The gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by chapter 1 of the Code which are attributable to such trade or business, plus

(2) His distributive share (whether or not distributed), as determined under section 704, of the income (or minus the loss), described in section 702(a)(9) and as computed under section 703, from any trade or business carried on by any partnership of which he is a member.

(b) Gross income derived by an individual from a trade or business includes payments received by him from a partnership of which he is a member for services rendered to the partnership or for the use of capital by the partnership, to the extent the payments are determined without regard to the income of the partnership. However, such payments received from a partnership not engaged in a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1 do not constitute gross income derived by an individual from a trade or business. See section 707(c) and the regulations thereunder, relating to guaranteed payments to a member of a partnership for services or the use of capital. See also section 706(a) and the regulations thereunder, relating to the taxable year of the partner in which such guaranteed payments are to be included in computing taxable income.

(c) Gross income derived by an individual from a trade or business includes gross income received (in the case of an individual reporting income on the cash receipts and disbursements method) or accrued (in the case of an individual reporting income on the accrual method) in the taxable year from a trade or business even though such income may be attributable in whole or in part to services rendered or other acts performed in a prior taxable year as to which the individual was not subject to the tax on self-employment income.

§ 1.1402(a)–2 Computation of net earnings from self-employment.

(a) *General rule.* In general, the gross income and deductions of an individual attributable to a trade or business (including a trade or business conducted by an employee referred to in paragraphs (b), (c), (d), or (e) of § 1.1402(c)–3), for the purpose of ascertaining his net earnings from self-employment, are to be determined by reference to the provisions of law and regulations applicable with respect to the taxes imposed by sections 1 and 3. Thus, if an individual uses the accrual method of accounting in computing taxable income from a trade or business for the purpose of the tax imposed by section 1 or 3, he must use the same method in determining net earnings from self-employment. Likewise, if a taxpayer engaged in a trade or business of selling property on the installment plan elects, under the provisions of section 453, to use the installment method in computing income for purposes of the tax under section 1 or 3, he must use the same method in determining net earnings from self-employment. Income which is excludable from gross income under any provision of subtitle A of the Internal Revenue Code is not taken into account in determining net earnings from self-employment except as otherwise provided in § 1.1402(a)–9, relating to certain residents of Puerto Rico, in § 1.1402(a)–11, relating to ministers or members of religious orders, and in § 1.1402(a)–12, relating to the term "possession of the United States" as used for purposes of the tax on self-employment income. Thus, in the case of a citizen of the United States conducting, in a foreign country, a trade or business in which both personal services and capital are material income-producing factors, any part of the income therefrom which is excluded from gross income as earned income under the provisions of section 911 and the regulations thereunder is not taken into account in determining net earnings from self-employment.

(b) *Trade or business carried on.* The trade or business must be carried on by the individual, either personally or through agents or employees. Accordingly, income derived from a trade or business carried on by an estate or trust is not included in determining the net earnings from self-employment of the individual beneficiaries of such estate or trust.

(c) *Aggregate net earnings.* Where an individual is engaged in more than one trade or business within the meaning of section 1402(c) and § 1.1402(c)–1, his net earnings from self-employment consist of the aggregate of the net income and losses (computed subject to the special rules provided in §§ 1.1402(a)–1 to 1.1402(a)–16, inclusive) of all such trades or businesses carried on by him. Thus, a loss sustained in one trade or business carried on by an individual will operate to offset the income derived by him from another trade or business.

(d) *Partnerships.* The net earnings from self-employment of an individual include, in addition to the earnings from a trade or business carried on by him, his distributive share of the income or loss, described in section 702(a)(9), from any trade or business carried on by each partnership of which he is a member. An individual's distributive share of such income or loss of a partnership shall be determined as provided in section 704, subject to the special rules set forth in section 1402(a) and in §§ 1.1402(a)–1 to 1.1402(a)–16, inclusive, and to the exclusions provided in section 1402(c) and §§ 1.1402(c)–2 to 1.1402(c)–6, inclusive. For provisions relating to the computation of the taxable income of a partnership, see section 703.

(e) *Different taxable years.* If the taxable year of a partner differs from that of the partnership, the partner shall include, in computing net earnings from self-employment, his distributive share of the income or loss, described in section 702(a)(9), of the partnership for its taxable year ending with or within the taxable year of the partner. For the special rule in case of the termination of a partner's taxable year as result of death, see §§ 1.1402(f) and 1.1402(f)–1.

(f) *Meaning of partnerships.* For the purpose of determining net earnings from self-employment, a partnership is one which is recognized as such for income tax purposes. For income tax purposes, the term "partnership" includes not only a partnership as known at common law, but, also a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any trade or business, financial operation, or venture, and which is not, within the meaning of the Code, a trust, estate, or a corporation. An organization described in the preceding sentence shall be treated as a partnership for purposes of the tax on self-employment income even though such organization has elected, pursuant to section 1361 and the regulations thereunder, to be taxed as a domestic corporation.

(g) *Nature of partnership interest.* The net earnings from self-employment of a partner include his distributive share of the income or loss, described in section 702(a)(9), of the partnership of which he is a member, irrespective of the nature of his membership. Thus, in determining his net earnings from self-employment, a limited or inactive partner includes his distributive share of such partnership income or loss. In the case of a partner who is a member of a partnership with respect to which an election has been made pursuant to section 1361 and the regulations thereunder to be taxed as a domestic corporation, net earnings from self-employment include his distributive share of the income or loss, described in section 702(a)(9), from the trade or business carried on by the partnership computed without regard to the fact that the partnership has elected to be taxed as a domestic corporation.

(h) *Proprietorship taxed as domestic corporation.* A proprietor of an unincorporated business enterprise with respect to which an election has been made pursuant to section 1361 and the regulations thereunder to be taxed as a domestic corporation shall compute his net earnings from self-employment without regard to the fact that such election has been made.

§ 1.1402(a)–3 Special rules for computing net earnings from self-employment.

For the purpose of computing net earnings from self-employment, the gross income derived by an individual from a trade or business carried on by

him, the allowable deductions attributable to such trade or business, and the individual's distributive share of the income or loss, described in section 702 (a) (9), from any trade or business carried on by a partnership of which he is a member shall be computed in accordance with the special rules set forth in §§ 1.1402(a)–4 to 1.1402(a)–16, inclusive.

§ 1.1402(a)–4 Rentals from real estate.

(a) *In general.* Rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) and the deductions attributable thereto, unless such rentals are received by an individual in the course of a trade or business as a real-estate dealer, are excluded. Whether or not an individual is engaged in the trade or business of a real-estate dealer is determined by the application of the principles followed in respect of the taxes imposed by sections 1 and 3. In general, an individual who is engaged in the business of selling real estate to customers with a view to the gains and profits that may be derived from such sales is a real-estate dealer. On the other hand, an individual who merely holds real estate for investment or speculation and receives rentals therefrom is not considered a real-estate dealer. Where a real-estate dealer holds real estate for investment or speculation in addition to real estate held for sale to customers in the ordinary course of his trade or business as a real-estate dealer, only the rentals from the real estate held for sale to customers in the ordinary course of his trade or business as a real-estate dealer, and the deductions attributable thereto, are included in determining net earnings from self-employment; the rentals from the real estate held for investment or speculation, and the deductions attributable thereto, are excluded. Rentals paid in crop shares include income derived by an owner or lessee of land under an agreement entered into with another person pursuant to which such other person undertakes to produce a crop or livestock on such land and pursuant to which (1) the crop or livestock, or the proceeds thereof, are to be divided between such owner or lessee and such other person, and (2) the share of the owner or lessee depends on the amount of the crop or livestock produced. See, however, paragraph (b) of this section.

(b) *Special rule for "includible farm rental income"*—(1) *In general.* Notwithstanding the rules set forth in paragraph (a) of this section, there shall be included in determining net earnings from self-employment for taxable years ending after 1955 any income derived by an owner or tenant of land, if the following requirements are met with respect to such income:

(i) The income is derived under an arrangement between the owner or tenant of land and another person which provides that such other person shall produce agricultural or horticultural commodities on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities; and

(ii) There is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity.

Income so derived shall be referred to in this section as "includible farm rental income".

(2) *Requirement that income be derived under an arrangement.* In order for rental income received by an owner or tenant of land to be treated as includible farm rental income, such income must be derived pursuant to a share-farming or other rental arrangement which contemplates material participation by the owner or tenant in the production or management of production of agricultural or horticultural commodities.

(3) *Nature of arrangement.* (i) The arrangement between the owner or tenant and the person referred to in subparagraph (1) of this paragraph may be either oral or written. The arrangement must impose upon such other person the obligation to produce one or more agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on the land of the owner or tenant. In addition, it must be within the contemplation of the parties that the owner or tenant will participate in the production or the management of the production of the agricultural or horticultural commodities required to be produced by the other person under such arrangement to an extent which is material with respect either to the production or to the management of production of such commodities or is material with respect to the production and management of production when the total required participation in connection with both is considered.

(ii) The term "production", wherever used in this paragraph, refers to the physical work performed and the expenses incurred in producing a commodity. It includes such activities as the actual work of planting, cultivating, and harvesting crops, and the furnishing of machinery, implements, seed, and livestock. An arrangement will be treated as contemplating that the owner or tenant will materially participate in the "production" of the commodities required to be produced by the other person under the arrangement if under the arrangement it is understood that the owner or tenant is to engage to a material degree in the physical work related to the production of such commodities. The mere undertaking to furnish machinery, implements, and livestock and to incur expenses is not, in and of itself, sufficient. Such factors may be significant, however, in cases where the degree of physical work intended of the owner or tenant is not material. For example, if under the arrangement it is understood that the owner or tenant is to engage periodically in physical work to a degree which is not material in and of itself and, in addition, to furnish a substantial portion of the machinery, implements, and livestock to be used in the production of the commodities or to furnish or advance funds or assume financial responsibility for a substantial part of the expense involved in the production of the commodities, the arrangement will be treated as contemplating material participation of the owner or tenant in the production of such commodities.

(iii) The term "management of the production", wherever used in this paragraph, refers to services performed in making managerial decisions relating to the production, such as when to plant, cultivate, dust, spray, or harvest the crop, and includes advising and consulting, making inspections, and making decisions as to matters such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished. An arrangement will be treated as contemplating that the owner or tenant is to participate materially in the "management of the production" of the commodities required to be produced by the other person under the arrangement if the owner or tenant is to engage to a material degree in the management decisions related to the production of such commodities. The services which are considered of particular importance in making such management decisions are those services performed in making inspections of the production activities and in advising and consulting with such person as to the production of the commodities. Thus, if under the arrangement it is understood that the owner or tenant is to advise or consult periodically with the other person as to the production of the commodities required to be produced by such person under the arrangement and to inspect periodically the production activities on the land, a strong inference will be drawn that the arrangement contemplates participation by the owner or tenant in the management of the production of such commodities. The mere undertaking to select the crops or livestock to be produced or the type of machinery and implements to be furnished or to make decisions as to the rotation of crops generally is not, in and of itself, sufficient. Such factors may be significant, however, in making the overall determination of whether the arrangement contemplates that the owner or tenant is to participate materially in the management of the production of the commodities. Thus, if in addition to the understanding that the owner or tenant is to advise or consult periodically with the other person as to the production of the commodities and to inspect periodically the production activities on the land, it is also understood that the owner is to select the type of crops and livestock to be produced and the type of machinery and implements to be furnished and to make decisions as to the rotation of crops, the arrangement will be treated as contemplating material participation of the owner or tenant in the management of production of such commodities.

(4) *Actual participation.* In order for the rental income received by the owner or tenant of land to be treated as includible farm rental income, not only must it be derived pursuant to the

arrangement described in subparagraph (1) of this paragraph, but also the owner or tenant must actually participate to a material degree in the production or in the management of the production of any of the commodities required to be produced under the arrangement, or he must actually participate in both the production and the management of the production to an extent that his participation in the one when combined with his participation in the other will be considered participation to a material degree. If the owner or tenant shows that he periodically advises or consults with the other person, who under the arrangement produces the agricultural or horticultural commodities, as to the production of any of these commodities and also shows that he periodically inspects the production activities on the land, he will have presented strong evidence of the existence of the degree of participation contemplated by section 1402(a)(1). If, in addition to the foregoing, the owner or tenant shows that he furnishes a substantial portion of the machinery, implements, and livestock used in the production of the commodities or that he furnishes or advances funds, or assumes financial responsibility, for a substantial part of the expense involved in the production of the commodities, he will have established the existence of the degree of participation contemplated by section 1402(a)(1) and this paragraph.

(5) *Employees or agents.* Any arrangement entered into by an employee or agent of an owner or tenant and another person shall be considered an arrangement entered into by the owner or tenant for purposes of satisfying the requirement set forth in subparagraph (2) of this paragraph that the income must be derived under an arrangement between the owner or tenant and another person. For purposes of determining whether the arrangement satisfies the requirement set forth in subparagraph (3) of this paragraph that the parties contemplate that the owner or tenant will materially participate in the production or management of production of a commodity, services which will be performed by an employee or agent of the owner or tenant are considered to be services which the arrangement contemplates will be performed by the owner or tenant. Services performed by such an employee or agent are considered services performed by the owner or tenant in determining the extent to which the owner or tenant has participated in the production or management of production of a commodity.

(6) *Examples.* Application of the rules prescribed in this paragraph may be illustrated by the following examples:

Example (1). After the death of her husband, Mrs. A rents her farm, together with its machinery and equipment, to B for one-half of the proceeds from the commodities produced on such farm by B. It is agreed that B will live in the tenant house on the farm and be responsible for the over-all operation of the farm, such as planting, cultivating, and harvesting the field crops, caring for the orchard and harvesting the fruit and caring for the livestock and poultry. It also is agreed that Mrs. A will continue to live in the farm residence and help B operate the farm. Under the agreement it is contemplated that Mrs. A will regularly operate and clean the cream separator and feed the poultry flock and collect the eggs. When possible she will assist B in such work as spraying the fruit trees, penning livestock, culling the poultry, and controlling weeds. She will also assist in preparing the meals when B engages seasonal workers. The agreement between Mrs. A and B clearly provides that she will materially participate in the over-all production operations to be conducted on her farm by B. In actual practice, Mrs. A performs such regular and intermittent services. The regularly performed services are material to the production of an agricultural commodity, and the intermittent services performed are material to the production operations to which they relate. The furnishing of a substantial portion of the farm machinery and equipment also adds support to a conclusion that Mrs. A has materially participated. Accordingly, the rental income Mrs. A receives from her farm should be included in net earnings from self-employment.

Example (2). D agrees to produce a crop on C's cotton farm under an arrangement providing that C and D will each receive one-half of the proceeds from such production. C agrees to furnish all the necessary equipment, and it is understood that he is to advise D when to plant the cotton and when it needs to be chopped, plowed, sprayed, and picked. It is also understood that during the growing season C is to inspect the crop every few days to determine whether D is properly taking care of the crop. Under the arrangement, D is required to furnish all labor needed to grow and harvest the crop. C, in fact, renders such advice, makes such inspections, and furnishes such equipment. C's contemplated participation in management decisions is considered material with respect to the management of the cotton production operation. C's actual participation pursuant to the arrangement is also considered to be material with respect to the management of the production of cotton. Accordingly, the income C receives from his cotton farm is to be included in computing his net earnings from self-employment.

Example (3). E owns a grain farm and turns its operation over to his son, F. By the oral rental arrangement between E and F, the latter agrees to produce crops of grain on the farm, and E agrees that he will be available for consultation and advice and will inspect and help to harvest the crops. E furnishes most of the equipment, including a tractor, a combine, plows, wagons, drills, and harrows; he continues to live on the farm and does some of the work such as repairing barns and farm machinery, going to town for supplies, cutting weeds, etc.; he regularly inspects the crops during the growing season; and he helps F to harvest the crops. Although the final decisions are made by F, he frequently consults with his father regarding the production of the crops. An evaluation of all of E's actual activities indicates that they are sufficiently substantial and regular to support a conclusion that he is materially participating in the crop production operations and the management thereof. If it can be shown that the degree of E's actual participation was contemplated by the arrangement, E's income from the grain farm will be included in computing net earnings from self-employment.

Example (4). G owns a fully-equipped farm which he rents to H under an arrangement which contemplates that G shall materially participate in the management of the production of crops raised on the farm pursuant to the arrangement. G lives in town about 5 miles from the farm. About twice a month he visits the farm and looks over the buildings and equipment. G may occasionally, in an emergency, discuss with H some phase of a crop production activity. In effect, H has complete charge of the management of farming operations regardless of the understanding between him and G. Although G pays one-half of the cost of the seed and fertilizer and is charged for the cost of materials purchased by H to make all necessary repairs, G's activities do not constitute material participation in the crop production activities. Accordingly, G's income from the crops is not included in computing net earnings from self-employment.

Example (5). J owned a farm several miles from the town in which he lived. He rented the farm to K under an arrangement which contemplated J's material participation in the management of production of wheat. J furnished one-half the seed and fertilizer and all the farm equipment and livestock. He employed H to perform all the services in advising, consulting, and inspecting contemplated by the arrangement. J is materially participating in the management of production of wheat by K. The work done by J's employee, H, is attributable to J in determining the extent of J's participation. J's rental income from the arrangement is to be included in computing his net earnings from self-employment.

Example (6). Assume the same facts as in the previous example except that J appointed the X Bank as his agent to enter into the rental arrangement with K and to perform the services contemplated by the arrangement. J is also materially participating in the management of production of wheat by K because the work done by X Bank is attributable to J in determining the extent of J's participation even though X Bank is an independent contractor. J's rental income from the arrangement is to be included in computing his net earnings from self-employment.

(c) *Rentals from living quarters*—(1) *No services rendered for occupants.* Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple-housing units are generally rentals from real estate. Except in the case of real-estate dealers, such payments are excluded in determining net earnings from self-employment even though such payments are in part attributable to personal property furnished under the lease.

(2) *Services rendered for occupants.* Payments for the use or occupancy of rooms or other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, or payments for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rentals from real estate; consequently, such payments are included in determining net earnings from self-employment. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, the collection of trash, and so forth, are not considered as services rendered to the occupant.

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. A, an individual, owns a building containing four apartments. During the taxable year, he receives $1,400 from apartments numbered 1 and 2, which are rented without services rendered to the occupants, and $3,600 from apartments numbered 3 and 4, which are rented with services rendered to the occupants. His fixed expenses for the four apartments aggregate $1,200 during the taxable year. In addition, he has $500 of expenses attributable to the services rendered to the occupants of apartments 3 and 4. In determining his net earnings from self-employment, A includes the $3,600 received from apartments 3 and 4, and the expenses of $1,100 ($500 plus one-half of $1,200) attributable thereto. The rentals and expenses attributable to apartments 1 and 2 are excluded. Therefore, A has $2,500 of net earnings from self-employment for the taxable year from the building.

(d) *Treatment of business income which includes rentals from real estate.* Except in the case of a real-estate dealer, where an individual or a partnership is engaged in a trade or business the income of which is classifiable in part as rentals from real estate, only that portion of such income which is not classifiable as rentals from real estate, and the expenses attributable to such portion, are included in determining net earnings from self-employment.

§ 1.1402(a)–5 Dividends and interest.

(a) All dividends on shares of stock are excluded unless they are received by an individual in the course of his trade or business as a dealer in stocks or securities.

(b) Interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof) is excluded unless such interest is received in the course of a trade or business as a dealer in stocks or securities. However, interest with respect to which a credit against tax is allowable as provided in section 35, that is, interest on certain obligations of the United States and its instrumentalities, is not included in net earnings from self-employment even though received in the course of a trade or business as a dealer in stocks or securities. Only interest on bonds, debentures, notes, or certificates, or other evidence of indebtedness, issued with interest coupons or in registered form by a corporation, is excluded in the case of all persons other than dealers in stocks or securities; other interest received in the course of any trade or business (such as interest received by a pawnbroker on his loans or interest received by a merchant on his accounts or notes receivable) is not excluded.

(c) Dividends and interest of the character excludable under paragraphs (a) and (b) of this section received by an individual on stocks or securities held for speculation or investment are excluded whether or not the individual is a dealer in stocks or securities.

(d) A dealer in stocks or securities is a merchant of stocks or securities with an established place of business, regularly engaged in the business of purchasing stocks or securities and reselling them to customers; that is, he is one who as a merchant buys stocks or securities and sells them to customers with a view to the gains and profits that may be derived therefrom. Persons who buy and sell or hold stocks or securities for investment or speculation, irrespective of whether such buying or selling constitutes the carrying on of a trade or business, are not dealers in stocks or securities.

§ 1.1402(a)–6 Gain or loss from disposition of property.

(a) There is excluded any gain or loss: (1) Which is considered as gain or loss from the sale or exchange of a capital asset; (2) from the cutting of timber or the disposal of timber or the disposal of coal, even though held primarily for sale to customers, if section 631 is applicable to such gain or loss; and (3) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of a trade or business. For the purpose of the special rule in subparagraph (3) of this paragraph, it is immaterial whether a gain or loss is treated as a capital gain or loss or as an ordinary gain or loss for purposes other than determining net earnings from self-employment. For instance, where the character of a loss is governed by the provisions of section 1231, such loss is excluded in determining net earnings from self-employment even though such loss is treated under section 1231 as an ordinary loss. For the purposes of this special rule, the term "involuntary conversion" means a compulsory or involuntary conversion of property into other property or money as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof; and the term "other disposition" includes the destruction or loss, in whole or in part, of property by fire, storm, shipwreck, or other casualty, or by theft, even though there is no conversion of such property into other property or money.

(b) The application of this section may be illustrated by the following example:

Example. During the taxable year 1954, A, who owns a grocery store, realized a net profit of $1,500 from the sale of groceries and a gain of $350 from the sale of a refrigerator case. During the same year, he sustained a loss of $2,000 as a result of damage by fire to the store building. In computing taxable income, all of these items are taken into account. In determining net earnings from self-employment, however, only the $1,500 of profit derived from the sale of groceries is included. The $350 gain and the $2,000 loss are excluded.

§ 1.1402(a)–7 Net operating loss deduction.

The deduction provided by section 172, relating to net operating losses sustained in years other than the taxable year, is excluded.

§ 1.1402(a)–8 Community income.

(a) *In case of an individual.* If any of the income derived by an individual from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income, and the deductions attributable to such income, shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife. For the purpose of this special rule, the term "management and control" means management and control in fact, not the management and control imputed to the husband under the community property laws. For example, a wife who operates a beauty parlor without any appreciable collaboration on the part of her husband will be considered as having substantially all of the management and control of such business despite the provision of any community property law vesting in the husband the right of management and control of community property; and the income and deductions attributable to the operation of such beauty parlor will be considered the income and deductions of the wife.

(b) *In case of a partnership.* Even though a portion of a partner's distributive share of the income or loss, described in section 702(a)(9), from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner; no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner. In any case in which both spouses are members of the same partnership, the distributive share of the income or loss of each spouse is included in computing the net earnings from self-employment of that spouse.

§ 1.1402(a)–9 Puerto Rico.

(a) *Residents.* A resident of Puerto Rico, whether or not a bona fide resident thereof during the entire taxable year, and whether or not an alien, a citizen of the United States, or a citizen of Puerto Rico, shall compute his net earnings from self-employment in the same manner as would a citizen of the United States residing in the United States. See paragraph (d) of § 1.1402(b)–1 for regulations relating to nonresident aliens. For the purpose of the tax on self-employment income, the gross income of such a resident of Puerto Rico also includes income from Puerto Rican sources. Thus, under this special rule, income from Puerto Rican sources will be included in determining net earnings from self-employment of a resident of Puerto Rico engaged in the active conduct of a trade or business in Puerto Rico despite the fact that, under section 933, such income may not be taken into

account for purposes of the tax under section 1 or 3.

(b) *Nonresidents.* A citizen of Puerto Rico who is also a citizen of the United States and who is not a resident of Puerto Rico will compute his net earnings from self-employment in the same manner and subject to the same provisions of law and regulations as other citizens of the United States.

§ 1.1402(a)–10 Personal exemption deduction.

The deduction provided by section 151, relating to personal exemptions, is excluded.

§ 1.1402(a)–11 Ministers and members of religious orders.

(a) *In general.* For each taxable year ending after 1954 in which a minister or member of a religious order is engaged in a trade or business, within the meaning of section 1402(c) and § 1.1402(c)–5, with respect to service performed in the exercise of his ministry or in the exercise of duties required by such order, net earnings from self-employment from such trade or business include the gross income derived during the taxable year from any such service, less the deductions attributable to such gross income. For each taxable year ending on or after December 31, 1957, such minister or member of a religious order shall compute his net earnings from self-employment derived from the performance of such service without regard to the exclusions from gross income provided by section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer). Thus, a minister who is subject to self-employment tax with respect to his services as a minister will include in the computation of his net earnings from self-employment for a taxable year ending on or after December 31, 1957, the rental value of a home furnished to him as remuneration for services performed in the exercise of his ministry or the rental allowance paid to him as remuneration for such services irrespective of whether such rental value or rental allowance is excluded from gross income by section 107. Similarly, the value of any meals or lodging furnished to a minister or to a member of a religious order in connection with service performed in the exercise of his ministry or as a member of such order will be included in the computation of his net earnings from self-employment for a taxable year ending on or after December 31, 1957, notwithstanding the exclusion of such value from gross income by section 119.

(b) *In employ of American employer.* If a minister or member of a religious order engaged in a trade or business described in section 1402(c) and § 1.1402(c)–5 is a citizen of the United States and performs service, in his capacity as a minister or member of a religious order, as an employee of an American employer, as defined in section 3121(h) and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations), his net earnings from self-employment derived from such service shall be computed as provided in paragraph (a) of this section but without regard to the exclusions from gross income provided in section 911, relating to earned income from sources without the United States, and section 931, relating to income from sources within possessions of the United States. Thus, even though all the income of the minister or member for service of the character to which this paragraph is applicable was derived from sources without the United States, or from sources within possessions of the United States, and therefore may be excluded from gross income, such income is included in computing net earnings from self-employment.

(c) *Minister in a foreign country whose congregation is composed predominantly of citizens of the United States*—(1) *Taxable years ending after 1956.* For any taxable year ending after 1956, a minister of a church, who is engaged in a trade or business within the meaning of section 1402(c) and § 1.1402(c)–5, is a citizen of the United States, is performing service in the exercise of his ministry in a foreign country, and has a congregation composed predominantly of United States citizens, shall compute his net earnings from self-employment derived from his services as a minister for such taxable year without regard to the exclusion from gross income provided in section 911, relating to earned income from sources without the United States. For taxable years ending on or after December 31, 1957, such minister shall also disregard sections 107 and 119 in the computation of his net earnings from self-employment. (See paragraph (a) of this section.) For purposes of section 1402(a)(8) and this paragraph a "congregation composed predominantly of citizens of the United States" means a congregation the majority of which throughout the greater portion of its minister's taxable year were United States citizens.

(2) *Election for taxable years ending after 1954 and before 1957.* (i) A minister described in subparagraph (1) of this paragraph who, for a taxable year ending after 1954 and before 1957, had income from service described in such subparagraph which would have been included in computing net earnings from self-employment if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e), may elect to have section 1402(a)(8) and subparagraph (1) of this paragraph apply to his income from such service for his taxable years ending after 1954 and before 1957. If such minister filed a waiver certificate prior to August 1, 1956, in accordance with § 1.1402(e)(1)–1, or he files such a waiver certificate on or before the due date of his return (including any extensions thereof) for his last taxable year ending before 1957, he must make such election on or before the due date of his return (including any extensions thereof) for such taxable year or before April 16, 1957, whichever is the later. If the waiver certificate is not so filed, the minister must make his election on or before the due date of the return (including any extensions thereof) for his first taxable year ending after 1956. Notwithstanding the expiration of the period prescribed by section 1402(e)(2) for filing such waiver, the minister may file a waiver certificate at the time he makes the election. In no event shall an election be valid unless the minister files prior to or at the time of the election a waiver certificate in accordance with § 1.1402(e)(1)–1.

(ii) The election shall be made by filing with the district director of internal revenue with whom the waiver certificate, Form 2031, is filed a written statement indicating that, by reason of the Social Security Amendments of 1956, the minister desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services performed in a foreign country as a minister of a congregation composed predominantly of United States citizens beginning with the first taxable year ending after 1954 and prior to 1957 for which he had income from such services. The statement shall be dated and signed by the minister and shall clearly state that it is an election for retroactive self-employment tax coverage under the Self-Employment Contributions Act of 1954. In addition, the statement shall include the following information:

(*a*) The name and address of the minister.

(*b*) His social security account number, if he has one.

(*c*) That he is a duly ordained, commissioned, or licensed minister of a church.

(*d*) That he is a citizen of the United States.

(*e*) That he is performing services in the exercise of his ministry in a foreign country.

(*f*) That his congregation is composed predominantly of citizens of the United States.

(*g*)(*1*) That he has filed a waiver certificate and, if so, where and under what circumstances the certificate was filed and the taxable year for which it is effective; or (*2*) That he is filing a waiver certificate with his election for retroactive coverage and, if so, the taxable year for which it is effective.

(*h*) That he has or has not filed income tax returns for his taxable years ending after 1954 and before 1957. If he has filed such returns, he shall state the years for which they were filed and indicate the district director of internal revenue with whom they were filed.

(iii) Notwithstanding section 1402(e)(3), a waiver certificate filed pursuant to § 1.1402(e)(1)–1 by a minister making an election under this paragraph shall be effective (regardless of when such certificate is filed) for such minister's first taxable year ending after 1954 in which he had income from service described in subparagraph (1) of this paragraph or for the taxable year of the minister prescribed by section 1402(e)(3), if such taxable year is earlier, and for all succeeding taxable years.

(iv) No interest or penalty shall be assessed or collected for failure to file

a return within the time prescribed by law if such failure arises solely by reason of an election made by a minister pursuant to this paragraph or for any underpayment of self-employment income tax arising solely by reason of such election, for the period ending with the date such minister makes an election pursuant to this paragraph.

(d) *Treatment of certain remuneration paid in 1955 and 1956 as wages.* For treatment of remuneration paid to an individual for service described in section 3121(b)(8)(A) which was erroneously treated by the organization employing him as employment within the meaning of chapter 21 of the Internal Revenue Code, see § 1.1402(e)(4)–1.

§ 1.1402(a)–12 Possession of the United States.

For purposes of the tax on self-employment income, the term "possession of the United States", as used in section 931 (relating to income from sources within possessions of the United States) and section 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa. The provisions of section 1402(a)(9) and of this section insofar as they involve nonapplication of sections 931 and 932 to Guam or American Samoa, shall apply only in the case of taxable years beginning after 1960.

§ 1.1402(a)–13 Income from agricultural activity.

(a) *Agricultural trade or business.* (1) An agricultural trade or business is one in which, if the trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g) and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations). In case the services are in part agricultural and in part nonagricultural, the time devoted to the performance of each type of service is the test to be used to determine whether the major portion of the services would constitute agricultural labor. If more than half of the time spent in performing all the services is spent in performing services which would constitute agricultural labor under section 3121(g), the trade or business is agricultural. If only half, or less, of the time spent in performing all the services is spent in performing services which would constitute agricultural labor under section 3121(g), the trade or business is not agricultural. In every case the time spent in performing the services will be computed by adding the time spent in the trade or business during the taxable year by every individual (including the individual carrying on such trade or business and the members of his family) in performing such services. The operation of this special rule is not affected by section 3121(c), relating to the included-excluded rule for determining employment.

(2) The rules prescribed in subparagraph (1) of this paragraph have no application where the nonagricultural services are performed in connection with an enterprise which constitutes a trade or business separate and distinct from the trade or business conducted as an agricultural enterprise. Thus, the operation of a roadside automobile service station on farm premises constitutes a trade or business separate and distinct from the agricultural enterprise, and the gross income derived from such service station, less the deductions attributable thereto, is to be taken into account in determining net earnings from self-employment.

(b) *Farm operator's income for taxable years ending before 1955.* Income derived in a taxable year ending before 1955 from any agricultural trade or business (see paragraph (a) of this section), and all deductions attributable to such income, are excluded in computing net earnings from self-employment.

(c) *Farm operator's income for taxable years ending after 1954.* Income derived in a taxable year ending after 1954 from an agricultural trade or business (see paragraph (a) of this section) is includible in computing net earnings from self-employment. Income derived from an agricultural trade or business includes income derived by an individual under an agreement entered into by such individual with another person pursuant to which such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on land owned or leased by such other person and pursuant to which the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such other person, and the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced. However, except as provided in paragraph (d) of this section, relating to arrangements involving material participation, the income derived under such an agreement by the owner or lessee of the land is not includible in computing net earnings from self-employment. See § 1.1402(a)–4. For options relating to the computation of net earnings from self-employment, see §§ 1.1402(a)–14 and 1.1402(a)–15.

(d) *Includible farm rental income for taxable years ending after 1955.* For taxable years ending after 1955, income derived from an agricultural trade or business (see paragraph (a) of this section) includes also income derived by the owner or tenant of land under an arrangement between such owner or tenant and another person, if such arrangement provides that such other person shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and if there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity. See paragraph (b) of § 1.1402(a)–4. For options relating to the computation of net earnings from self-employment, see §§ 1.1402(a)–14 and 1.1402(a)–15.

(e) *Income from service performed after 1956 as a crew leader.* Income derived by a crew leader (see section 3121(o) and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations)) from service performed after 1956 in furnishing individuals to perform agricultural labor for another person and from service performed after 1956 in agricultural labor as a member of the crew is considered to be income derived from a trade or business for purposes of § 1.1402(c)–1. Whether such trade or business is an agricultural trade or business shall be determined by applying the rules set forth in this section.

§ 1.1402(a)–14 Options available to farmers in computing net earnings from self-employment for taxable years ending after 1954 and before December 31, 1956.

(a) *Computation of net earnings.* In the case of any trade or business which is carried on by an individual who reports his income on the cash receipts and disbursements method, and in which, if it were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g) (see paragraph (a) of § 1.1402(a)–13), net earnings from self-employment may, for a taxable year ending after 1954, at the option of the taxpayer, be computed as follows:

(1) *Gross income $1,800 or less.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is $1,800 or less, the taxpayer may, at his option, treat as net earnings from self-employment from such trade or business an amount equal to 50 percent of such gross income. If the taxpayer so elects, the amount equal to 50 percent of such gross income shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any.

(2) *Gross income in excess of $1,800.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is more than $1,800, and the actual net earnings from self-employment from such trade or business are less than $900, the taxpayer may, at his option, treat $900 as net earnings from self-employment. If the taxpayer so elects, $900 shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any. However, if the taxpayer's actual net earnings from such trade or business, as computed in accordance with §§ 1.1402(a)–1 through 1.1402(a)–3 are $900 or more, such actual net earnings shall be used in computing his self-employment income.

(b) *Computation of gross income.* For purposes of paragraph (a) of this section, gross income shall consist of the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of § 1.1402

(a)–3, relating to income and deductions not included in computing net earnings from self-employment.

(c) *Two or more agricultural activities.* If an individual is engaged in more than one agricultural trade or business within the meaning of paragraph (a) of § 1.1402(a)–13 (for example, the business of ordinary farming and the business of cotton ginning), the gross income derived from each agricultural trade or business shall be aggregated for purposes of the optional method provided in paragraph (a) of this section for computing net earnings from self-employment.

(d) *Examples.* Application of the regulations prescribed in paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). F, a farmer, uses the cash receipts and disbursements method of accounting in making his income tax returns. F's books and records show that during the calendar year 1955 he received $1,200 from the sale of produce raised on the farm, $200 from the sale of livestock raised on the farm and not held for breeding or dairy purposes, and $600 from the sale of a tractor. The income from the sale of the tractor is of a type which is excluded from net earnings from self-employment by section 1402(a). F's actual net earnings from self-employment, computed in accordance with the provisions of §§ 1.1402(a)–1 through 1.1402(a)–3, are $450. F may report $450 as his net earnings from self-employment or he may elect to report $700 (one-half of $1,400).

Example (2). C, a cattleman, uses the cash receipts and disbursements method of accounting in making his income tax returns. C had actual net earnings from self-employment, computed in accordance with the provisions of §§ 1.1402(a)–1 through 1.1402(a)–3, of $725. His gross receipts were $1,000 from the sale of produce raised on the farm and $1,200 from the sale of feeder cattle, which C bought for $500. The income from the sale of the feeder cattle is of a type which is included in computing net earnings from self-employment. Therefore, C may report $725 as his net earnings from self-employment or he may elect to report $850, one-half of $1,700 ($2,200 minus $500).

Example (3). R, a rancher, has gross income of $3,000 from the operation of his ranch, computed as provided in paragraph (b) of this section. His actual net earnings from self-employment from farming activities are less than $900. R, nevertheless, may elect to report $900 as net earnings from self-employment from such trade or business. If R had actual net earnings from self-employment from his farming activities in the amount of $900 or more, he would be required to report such amount in computing his self-employment income.

(e) *Members of farm partnerships.* The optional method provided by paragraph (a) of this section for computing net earnings from self-employment is not available to a member of a partnership with respect to his distributive share of the income or loss from any trade or business carried on by any partnership of which he is a member.

§ 1.1402(a)–15 Options available to farmers in computing net earnings from self-employment for taxable years ending on or after December 31, 1956.

(a) *Computation of net earnings.* In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g) (see paragraph (a) of § 1.1402(a)–13), net earnings from self-employment may, for a taxable year ending on or after December 31, 1956, at the option of the taxpayer, be computed as follows:

(1) *In case of an individual*—(i) *Gross income $1,800 or less.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is $1,800 or less, the taxpayer may, at his option, treat as net earnings from self-employment from such trade or business an amount equal to 66⅔ percent of such gross income. If the taxpayer so elects, the amount equal to 66⅔ percent of such gross income shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any.

(ii) *Gross income in excess of $1,800.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is more than $1,800, and the net earnings from self-employment from such trade or business (computed without regard to this section) are less than $1,200, the taxpayer may, at his option, treat $1,200 as net earnings from self-employment. If the taxpayer so elects, $1,200 shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any. However, if the taxpayer's actual net earnings from such trade or business, as computed in accordance with the applicable provisions of §§ 1.1402(a)–1 to 1.1402(a)–13, inclusive, are $1,200 or more, such actual net earnings shall be used in computing his self-employment income.

(2) *In case of a member of a partnership*—(i) *Distributive share of gross income $1,800 or less.* If a taxpayer's distributive share of the gross income of a partnership (as such gross income is computed under the provisions of paragraph (b) of this section) derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is $1,800 or less, the taxpayer may, at his option, treat as his distributive share of income described in section 702(a)(9) derived from such trade or business an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been reduced by the sum of all payments to which section 707(c) applies). If the taxpayer so elects, the amount equal to 66⅔ percent of his distributive share of such gross income shall be used by him in the computation of his net earnings from self-employment in lieu of the actual amount of his distributive share of income described in section 702(a)(9) from such trade or business, if any.

(ii) *Distributive share of gross income in excess of $1,800.* If a taxpayer's distributive share of the gross income of the partnership (as such gross income is computed under the provisions of paragraph (b) of this section) derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $1,800 and the actual amount of his distributive share (whether or not distributed) of income described in section 702(a)(9) derived from such trade or business (computed without regard to this section) is less than $1,200, the taxpayer may, at his option, treat $1,200 as his distributive share of income described in section 702(a)(9) derived from such trade or business. If the taxpayer so elects, $1,200 shall be used by him in the computation of his net earnings from self-employment in lieu of the actual amount of his distributive share of income described in section 702(a)(9) from such trade or business, if any. However, if the actual amount of the taxpayer's distributive share of income described in section 702(a)(9) from such trade or business, as computed in accordance with the applicable provisions of §§ 1.1402(a)–1 to 1.1402(a)–13, inclusive, is $1,200 or more, such actual amount of the taxpayer's distributive share shall be used in computing his net earnings from self-employment.

(iii) *Cross reference.* For a special rule in the case of certain deceased partners, see paragraph (c) of § 1.1402(f)–1.

(b) *Computation of gross income.* For purposes of this section gross income has the following meanings:

(1) In the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business (see paragraphs (a) and (c), other than paragraph (a)(5), of § 1.61–4), adjusted (after such reduction) in accordance with the applicable provisions of §§ 1.1402(a)–3 to 1.1402(a)–13, inclusive.

(2) In the case of any such trade or business in which the income is computed under an accrual method (see paragraphs (b) and (c), other than paragraph (b)(5), of § 1.61–4), the gross income from such trade or business, adjusted in accordance with the applicable provisions of §§ 1.1402(a)–3 to 1.1402(a)–13, inclusive.

(c) *Two or more agricultural activities.* If an individual (including a member of a partnership) derives gross income (as defined in paragraph (b) of this section) from more than one agricultural trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business. Thus, such an individual shall aggregate his gross income derived from each agricultural trade or business carried on by him (which includes, under paragraph (b) of § 1.1402(a)–1, any guaranteed payment, within the meaning of section 707(c), received by him from a farm partnership of which he is a member) and his distributive share of partnership gross income (after such gross income has been reduced by any guaranteed payment within the meaning of section 707(c)) derived from each farm

partnership of which he is a member. Such gross income is the amount to be considered for purposes of the optional method provided in this section for computing net earnings from self-employment. If the aggregate gross income of an individual includes income derived from an agricultural trade or business carried on by him and a distributive share of partnership income derived from an agricultural trade or business carried on by a partnership of which he is a member, such aggregate gross income shall be treated as income derived from a single trade or business carried on by him, and such individual shall apply the optional method applicable to individuals set forth in paragraph (a)(1) of this section for purposes of computing his net earnings from self-employment.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). F is engaged in the business of farming and computes his income under the cash receipts and disbursements method. He files his income tax returns on the basis of the calendar year. During the year 1956, F's gross income from the business of farming (computed in accordance with paragraph (b)(1) of this section) is $1,725. His actual net earnings from self-employment derived from such business are $650. As his net earnings from self-employment, F may report $650 or, by the optional computation method, he may report $1,150 (66⅔ percent of $1,725).

Example (2). G is engaged in the business of farming and computes his income under the accrual method. His income tax returns are filed on the calendar year basis. For the year 1957, G's gross income from the operation of his farm (computed in accordance with paragraph (b)(2) of this section) is $2,500. He has actual net earnings from self-employment derived from such farm in the amount of $950. As his net earnings from self-employment derived from his farm, G may report his actual net earnings of $950, or by the optional method he may report $1,200. If G's actual net earnings from self-employment from his farming activities for 1957 were in an amount of $1,200 or more, he would be required to report such amount in computing his self-employment income.

Example (3). M, who files his income tax returns on a calendar year basis, is one of the three partners of the XYZ Company, a partnership, engaged in the business of farming. The taxable year of the partnership is the calendar year, and its income is computed under the cash receipts and disbursements method. For M's services in connection with the planting, cultivating, and harvesting of the crops during the year 1958, the partnership agrees to pay him $500, the full amount of which is determined without regard to the income of the partnership and constitutes a guaranteed payment within the meaning of section 707(c). This guaranteed payment to M is the only such payment made during such year. The gross income derived from the business for the year 1958, computed in accordance with paragraph (b)(1) of this section and after being reduced by the guaranteed payment of $500 made to M, is $3,000. One-third of the $3,000 ($1,000), is M's distributive share of such gross income. Under paragraph (c) of this section, the guaranteed payment ($500) received by M and his distributive share of the partnership gross income ($1,000) are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing net earnings from self-employment. Since M's combined gross income from his two agricultural businesses ($1,000 and $500) is not more than $1,800 and since such income is deemed to be derived from one trade or business, M's net earnings from self-employment derived from such farming business may, at his option, be deemed to be $1,000 (66⅔ percent of $1,500).

Example (4). A is one of the two partners of the AB partnership which is engaged in the business of farming. The taxable year of the partnership is the calendar year and its income is computed under the accrual method. A files his income tax returns on the calendar year basis. The partnership agreement provides for an equal sharing in the profits and losses of the partnership by the two partners. A is an experienced farmer and for his services as manager of the partnership's farm activities during the year 1959, he receives $3,000 which amount constitutes a guaranteed payment within the meaning of section 707(c). The gross income of the partnership derived from such business for the year 1959, computed in accordance with paragraph (b)(2) of this section and after being reduced by the guaranteed payment made to A, is $6,600. A's distributive share of such gross income is $3,300, and his distributive share of income described in section 702(a)(9) derived from the partnership's business is $1,100. Under paragraph (c) of this section, the guaranteed payment received by A and his distributive share of the partnership gross income are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing his net earnings from self-employment. Since the aggregate of A's guaranteed payment ($3,000) and his distributive share of partnership gross income ($3,300) is more than $1,800 and since the aggregate of A's guaranteed payment ($3,000) and his distributive share ($1,100) of partnership income described in section 702(a)(9) is not less than $1,200, the optional method of computing net earnings from self-employment is not available to A.

Example (5). F is a member of the EFG partnership which is engaged in the business of farming. F files his income tax returns on the calendar year basis. The taxable year of the partnership is the calendar year, and its income is computed under a cash receipts and disbursements method. Under the partnership agreement the partners are to share equally the profits or losses of the business. The gross income derived from the partnership business for the year 1959, computed in accordance with paragraph (b)(1) of this section is $5,700. F's share of such gross income is $1,900. Due to drought and an epidemic among the livestock, the partnership sustains a net loss of $6,000 for the year 1959 of which loss F's share is $2,000. Since F's distributive share of gross income derived from such business is in excess of $1,800 and since F does not receive income described in section 702(a)(9) of $1,200 or more from such business, he may, at his option, be deemed to have received $1,200 as his distributive share of income described in section 702(a)(9) from such business.

§ 1.1402(a)–16 Exercise of option.

A taxpayer shall, for each taxable year with respect to which he is eligible to use the optional method described in § 1.1402(a)–14 or § 1.1402(a)–15, make a determination as to whether his net earnings from self-employment are to be computed in accordance with such method. If the taxpayer elects the optional method for a taxable year, he shall signify such election by computing net earnings from self-employment under the optional method as set forth in Schedule F (Form 1040) of the income tax return filed by the taxpayer for such taxable year. If the optional method is not elected at the time of the filing of the return for a taxable year with respect to which the taxpayer is eligible to elect such optional method, such method may be elected on an amended return (or on such other form as may be prescribed for such use) filed within the period prescribed by section 6501 and the regulations thereunder for the assessment of the tax for such taxable year. If the optional method is elected on a return for a taxable year, the taxpayer may revoke such election by filing an amended return (or such other form as may be prescribed for such use) for the taxable year within the period prescribed by section 6501 and the regulations thereunder for the assessment of the tax for such taxable year. If the taxpayer is deceased or unable to make an election, the person designated in section 6012(b) and the regulations thereunder may, within the period prescribed in this section elect the optional method for any taxable year with respect to which the taxpayer is eligible to use the optional method and revoke an election previously made by or for the taxpayer.

§ 1.1402(b) Statutory provisions; definitions; self-employment income.

SEC. 1402. *Definitions.* * * *

(b) *Self-employment income.* The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and before 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations), as would be wages under section 3121(a) if such services constituted employment under section 3121(b). An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

[Sec. 1402(b) as amended by sec. 201(b), Social Security Amendments 1954 (68 Stat. 1088); sec. 402(a), Social Security Amendments 1958 (72 Stat. 1042); sec. 103(l), Social Security Amendments 1960 (74 Stat. 938)]

§ 1.1402(b)–1 Self-employment income.

(a) *In general.* Except for the exclusions in paragraphs (b) and (c) of this section and the exception in paragraph (d) of this section, the term "self-employment income" means the net earnings from self-employment derived by an individual during a taxable year.

(b) *Maximum self-employment income.* (1) The maximum self-employment income of an individual for any taxable year (whether a period of 12 months or less) is $4,800, except that the maximum self-employment income for any taxable year ending before 1955 is $3,600 and the maximum self-employment income for any taxable year ending after 1954 and before 1959 is $4,200. If an individual is paid wages as defined in section 3121(a), the maximum self-employment income is the excess of $4,800 ($3,600 for a taxable year ending before 1955 and $4,200 for a taxable year ending after 1954 and before 1959) over the amount of such wages. For example, if during the taxable year ending in 1959 no such wages are paid and the individual has $5,000 of net earnings from self-employment, he has $4,800 of self-employment income for such taxable year. If, in addition to having $5,000 of net earnings from self-employment, such individual is paid $1,000 of such wages, he has only $3,800 of self-employment income for the taxable year.

(2) For the purpose of the limitation described in subparagraph (1) of this paragraph, the term "wages" includes such remuneration paid to an employee for services covered by—

(i) An agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), which section provides for extension of the Federal old-age, survivors and disability insurance system to State and local government employees under voluntary agreements between the States and the Secretary of Health, Education, and Welfare (Federal Security Administrator before April 11, 1953), or

(ii) An agreement entered into pursuant to the provisions of section 3121 (l), relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations,

as would be wages under section 3121(a) if such services constituted employment under section 3121(b). For an explanation of the term "wages", see the regulations under section 3121(a) in Part 31 of this chapter (Employment Tax Regulations).

(c) *Minimum net earnings from self-employment.* Self-employment income does not include the net earnings from self-employment of an individual when the amount of such earnings for the taxable year is less than $400. Thus, an individual having only $300 of net earnings from self-employment for the taxable year would not have any self-employment income. However, an individual having net earnings from self-employment of $400 or more for the taxable year may have less than $400 of self-employment income. This could occur in a case in which the amount of the individual's net earnings from self-employment is $400 or more for a taxable year and the amount of such net earnings from self-employment plus the amount of the wages received by the individual during that taxable year exceed $4,800 ($3,600 for taxable years ending before 1955 or $4,200 for taxable years ending after 1954 and before 1959). For example, if an individual has net earnings from self-employment of $1,000 for 1959 and also receives wages of $4,500 during that taxable year, his self-employment income for that taxable year is $300.

(d) *Nonresident aliens.* A nonresident alien individual never has self-employment income. While a nonresident alien individual who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa (whether by agents or employees, or by a partnership of which he is a member) may be subject to the applicable income tax provisions on such income, such nonresident alien individual will not be subject to the tax on self-employment income, since any net earnings which he may have from self-employment do not constitute self-employment income. For the purpose of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or, for taxable years beginning after 1960, of Guam or American Samoa is not considered to be a nonresident alien individual.

§ 1.1402(c) Statutory provisions; definitions; trade or business.

SEC. 1402. *Definitions.* * * *

(c) *Trade or business.* The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) The performance of the functions of a public office;

(2) The performance of service by an individual as an employee, other than—

(A) Service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) Service described in section 3121(b)(16),

(C) Service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States, and

(D) Service described in paragraph (4) of this subsection;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(5) The performance of service by an individual in the exercise of his profession as a doctor of medicine or Christian Science practitioner; or the performance of such service by a partnership.

The provisions of paragraph (4) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual during the period for which a certificate filed by such individual under subsection (e) is in effect. The provisions of paragraph (5) shall not apply to service performed by an individual in the exercise of his profession as a Christian Science practitioner during the period for which a certificate filed by him under subsection (e) is in effect.

[Sec. 1402(c) as amended by secs. 201(c)(1), (2), and (5), and 205(e), Social Security Amendments 1954 (68 Stat. 1088, 1089, 1092); sec. 201(e)(3), and (f), Social Security Amendments 1956 (70 Stat. 841); sec. 106(b), Social Security Amendments 1960 (74 Stat. 945)]

§ 1.1402(c)–1 Trade or business.

In order for an individual to have net earnings from self-employment, he must carry on a trade or business, either as an individual or as a member of a partnership. Except for the exclusions discussed in §§ 1.1402(c)–2 to 1.1402(c)–6, inclusive, the term "trade or business", for the purpose of the tax on self-employment income, shall have the same meaning as when used in section 162. An individual engaged in one of the excluded activities specified in such sections of the regulations may also be engaged in carrying on activities which constitute a trade or business for purposes of the tax on self-employment income. Whether or not he is also engaged in carrying on a trade or business will be dependent upon all of the facts and circumstances in the particular case. An individual who is a crew leader, as defined in section 3121(o) (see such section and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations)), is considered to be engaged in carrying on a trade or business with respect to services performed by him after 1956 in furnishing individuals to perform agricultural labor for another person or services performed by him after 1956 as a member of the crew.

§ 1.1402(c)–2 Public office.

The performance of the functions of a public office does not constitute a trade or business. The term "public office" includes any elective or appointive office of the United States or any possession thereof, or of a State or its political subdivisions, or of a wholly owned instrumentality of any one or more of the foregoing. For example, the President, the Vice President, a governor, a mayor, the Secretary of State, a member of Congress, a State representative, a county commissioner, a judge, a county or city attorney, a marshal, a sheriff, a register of deeds, or a notary public performs the functions of a public office.

§ 1.1402(c)–3 Employees.

(a) *General rule.* Generally, the performance of service by an individual as an employee, as defined in the Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code) does not constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1. However, in the four cases set forth in paragraphs (b) to (e), inclusive, of this section, the performance of service by an individual is considered to constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1. (As to when an individual is an employee, see section 3121 (d) and (o) and the regulations thereunder in Part

31 of this chapter (Employment Tax Regulations).)

(b) *Newspaper vendors.* Service performed by an individual who has attained the age of 18 constitutes a trade or business for purposes of the tax on self-employment income within the meaning of section 1402(c) and § 1.1402(c)–1 if performed in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(c) *Sharecroppers.* Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(1) Such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(2) The agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(3) The amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced,

constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1.

(d) *Employees of foreign government, instrumentality wholly owned by foreign government, or international organization.* Service performed in the United States, as defined in section 3121(e)(2) (see such section and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations)), by an individual who is a citizen of the United States constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1 if such service is excepted from employment, for purposes of the Federal Insurance Contributions Act (chapter 21 of the Code), by—

(1) Section 3121(b)(11), relating to service in the employ of a foreign government (for regulations under section 3121(b)(11), see § 31.3121(b)(11)–1 of this chapter);

(2) Section 3121(b)(12), relating to service in the employ of an instrumentality wholly owned by a foreign government (for regulations under section 3121(b)(12), see § 31.3121(b)(12)–1 of this chapter); or

(3) Section 3121(b)(15), relating to service in the employ of an international organization (for regulations under section 3121(b)(15), see § 31.3121(b)(15)–1 of this chapter).

This paragraph is applicable to service performed in any taxable year ending on or after December 31, 1960, except that it does not apply to service performed before 1961 in Guam or American Samoa.

(e) *Ministers and members of religious orders.* Service described in section 1402(c)(4) performed by an individual during taxable years for which a certificate filed pursuant to section 1402(e) is in effect constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1. See also § 1.1402(c)–5.

§ 1.1402(c)–4 Individuals under Railroad Retirement System.

The performance of service by an individual as an employee or employee representative as defined in section 3231(b) and (c), respectively (see §§ 31.3231(b)–1 and 31.3231(c)–1 of Part 31 of this chapter (Employment Tax Regulations)), that is, an individual covered under the railroad retirement system, does not constitute a trade or business.

§ 1.1402(c)–5 Ministers and members of religious orders.

(a) *In general.* For taxable years ending before 1955, a duly ordained, commissioned, or licensed minister of a church or a member of a religious order is not engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by such order. However, for taxable years ending after 1954, any individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) may elect, as provided in § 1.1402(e)(1)–1, to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in his capacity as such a minister or member. If such a minister or a member of a religious order makes an election pursuant to § 1.1402(e)(1)–1 he is, with respect to service performed by him in such capacity, engaged in carrying on a trade or business for each taxable year to which the election is effective. An election by a minister or member of a religious order has no application to service performed by such minister or member which is not in the exercise of his ministry or in the exercise of duties required by such order.

(b) *Service by a minister in the exercise of his ministry.* (1) A certificate of election filed by a duly ordained, commissioned, or licensed minister of a church under the provisions of § 1.1402(e)(1)–1 has application only to service performed by him in the exercise of his ministry.

(2) Except as provided in paragraph (c)(3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(i) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(ii) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(iii) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization. The application of this rule may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged to perform service as chaplain at N University. M devotes his entire time to performing his duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his ministry.

(iv) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (2)(ii) of this paragraph) is in the exercise of his ministry. The application of this rule may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. He performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(v) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry. The application of this rule may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by X, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) *Service by a minister not in the exercise of his ministry.* (1) A certificate filed by a duly ordained, commissioned, or licensed minister of a church under the provisions of § 1.1402(e)(1)–1 has no application to service performed by him which is not in the exercise of his ministry.

(2) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph. The application of the rule in this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the tax on self-employment income, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) *Service in the exercise of duties required by a religious order.* A certificate of election filed by a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) under the provisions of § 1.1402(e)(1)–1 has application to all duties required of him by such order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

§ 1.1402(c)–6 Members of certain professions.

(a) *Periods of exclusion*—(1) *Taxable years ending before 1955.* For taxable years ending before 1955, an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, funeral director, or professional engineer.

(2) *Taxable years ending in 1955.* Except as provided in paragraph (b) of this section, for a taxable year ending in 1955 an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, or Christian Science practitioner.

(3) *Taxable years ending after 1955.* Except as provided in paragraph (b) of this section, for taxable years ending after 1955 an individual is not engaged in carrying on a trade or business with respect to the performance of service in the exercise of his profession as a doctor of medicine or Christian Science practitioner.

(b) *Election by Christian Science practitioner.* For taxable years ending after 1954, a Christian Science practitioner may elect, as provided in § 1.1402(e)(1)–1, to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in the exercise of his profession as a Christian Science practitioner. If an election is made pursuant to § 1.1402(e)(1)–1, the Christian Science practitioner is, with respect to the performance of service in the exercise of such profession, engaged in carrying on a trade or business for each taxable year for which the election is effective. An election by a Christian Science practitioner has no application to service performed by him which is not in the exercise of his profession as a Christian Science practitioner.

(c) *Meaning of terms.* The designations in this section are to be given their commonly accepted meanings. For taxable years ending after 1955, an individual who is a doctor of osteopathy, and who is not a doctor of medicine within the commonly accepted meaning of that term, is deemed, for purposes of this section, not to be engaged in carrying on a trade or business in the exercise of the profession of doctor of medicine.

(d) *Legal requirements.* The exclusions specified in paragraph (a) of this section apply only if the individuals meet the legal requirements, if any, for practicing their professions in the place where they perform the service.

(e) *Partnerships.* In the case of a partnership engaged in the practice of any of the designated excluded professions, the partnership shall not be considered as carrying on a trade or business for the purpose of the tax on self-employment income, and none of the distributive shares of the income or loss, described in section 702(a)(9), of such partnership shall be included in computing net earnings from self-employment of any member of the partnership. On the other hand, where a partnership is engaged in a trade or business not within any of the designated excluded professions, each partner must include his distributive share of the income or loss, described in section 702(a)(9), of such partnership in computing his net earnings from self-employment, irrespective of whether such partner is engaged in the practice of one or more of such professions and contributes his professional services to the partnership.

§ 1.1402(d) Statutory provisions; definitions; employee and wages.

SEC. 1402. *Definitions.* * * *

(d) *Employee and wages.* The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

§ 1.1402(d)–1 Employee and wages.

For the purpose of the tax on self-employment income, the term "employee" and the term "wages" shall have the same meaning as when used in the Federal Insurance Contributions Act. For an explanation of these terms, see Subpart B of Part 31 of this chapter (Employment Tax Regulations).

§ 1.1402(e)(1) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; waiver certificate.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners*—(1) *Waiver certificate.* Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that he elects to have the insurance system established by title II of the Social Security Act extended to service described in subsection (c)(4), or service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be, performed by him.

[Sec. 1402(e)(1) as added by sec. 201(c)(3), Social Security Amendments 1954 (68 Stat. 1088)]

§ 1.1402(e)(1)–1 Election by ministers, members of religious orders, and Christian Science practitioners for self-employment coverage.

(a) *In general.* Any individual who is (1) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of

such order) or (2) a Christian Science practitioner may elect to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in the exercise of his ministry or in the exercise of duties required by such order, or in the exercise of his profession as a Christian Science practitioner, as the case may be. Such an election shall be made by filing a certificate on Form 2031 in the manner provided in paragraph (b) of this section and within the time specified in § 1.1402(e)(2)–1. If a minister or member to whom this section has application, or a Christian Science practitioner, makes an election by filing Form 2031 such individual shall, for each taxable year for which the election is effective (see § 1.1402(e)(3)–1), be considered as carrying on a trade or business with respect to the performance of service in his capacity as a minister or member, or as a Christian Science practitioner, as the case may be.

(b) *Waiver certificate.* The certificate on Form 2031 shall be filed in triplicate with the district director of internal revenue for the internal revenue district in which is located the legal residence or principal place of business of the individual who executes the certificate. If such individual has no legal residence or principal place of business in any internal revenue district, the certificate shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C., 20225, or at such other address as is designated in the instructions relating to the certificate. The certificate must be filed within the time prescribed in § 1.1402(e)(2)–1. If an individual to whom paragraph (a) of this section has application submits to a district director of internal revenue a dated and signed statement indicating that he desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services, such statement will be treated as a waiver certificate, if filed within the time specified in § 1.1402(e)(2)–1, provided that without unnecessary delay such statement is supplemented by a properly executed Form 2031. An application for a social security account number filed on Form SS–5 or the filing of an income tax return showing an amount representing self-employment income or self-employment tax shall not be construed to constitute an election referred to in § 1.1402(e)(1)–1.

§ 1.1402(e)(2) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; time for filing certificate.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners.* * * *

(2) *Time for filing certificates.* Any individual who desires to file a certificate pursuant to paragraph (1) must file such certificate on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for his second taxable year ending after 1954 for which he has net earnings from self-employment (computed, in the case of an individual referred to in paragraph (1)(A), without regard to subsection (c)(4), and, in the case of an individual referred to in paragraph (1)(B), without regard to subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4), or from the performance of service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be; or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1959.

[Sec. 1402(e)(2) as added by sec. 201(c)(3), Social Security Amendments 1954 (68 Stat. 1088); as amended by sec. 1, Act of Aug. 30, 1957 (Pub. Law 85–239, 71 Stat. 521); sec. 101(a), Social Security Amendments 1960 (74 Stat. 926)]

§ 1.1402(e)(2)–1 Time limitation for filing waiver certificate.

(a) *General rule.* (1) Any individual referred to in § 1.1402(e)(1)–1 who desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services must file the waiver certificate (Form 2031) prescribed by § 1.1402(e)(1)–1 on or before whichever of the following dates is later:

(i) The due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for his second taxable year ending after 1959, or

(ii) The due date of the income tax return, including any extension thereof, for his second taxable year ending after 1954 for which he has net earnings from self-employment (computed as prescribed in paragraph (c) of this section) of $400 or more, any part of which—

(*a*) In the case of a duly ordained, commissioned, or licensed minister of a church, consists of remuneration for service performed in the exercise of his ministry,

(*b*) In the case of a member of a religious order who has not taken a vow of poverty as a member of such order, consists of remuneration for service performed in the exercise of duties required by such order, or

(*c*) In the case of a Christian Science practitioner, consists of remuneration for service performed in the exercise of his profession as a Christian Science practitioner.

(2) If a minister, a member of a religious order, or a Christian Science practitioner derives gross income in a taxable year both from service performed in such capacity and from the conduct of another trade or business, and the deductions allowed by chapter 1 of the Internal Revenue Code which are attributable to the gross income derived from service performed in such capacity equal or exceed the gross income derived from service performed in such capacity, no part of the net earnings from self-employment (computed as prescribed in paragraph (c) of this section) for the taxable year shall be considered as derived from service performed in such capacity.

(3) The application of the rules set forth in subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). M was ordained as a minister in May 1959. During each of the taxable years 1959 and 1962, M, who makes his income tax returns on a calendar year basis, derives net earnings in excess of $400 from his activities as a minister. M has net earnings of $350 for each of the taxable years 1960 and 1961, $200 of which is derived from service performed by him as a minister. If M wishes to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his service as a minister, he must file the waiver certificate on or before the due date of his income tax return for 1962, or any extension thereof.

Example (2). M, who was ordained a minister in January 1962, is employed as a toolmaker by the XYZ Corporation for the taxable years 1962 and 1963 and also engages in activities as a minister on weekends. M makes his income tax returns on the basis of a calendar year. During each of the taxable years 1962 and 1963, M receives wages of $4,800 from the XYZ Corporation and derives $400 (all of which constitutes net earnings from self-employment computed as prescribed in paragraph (c) of this section) from his activities as a minister. In such case if M wishes to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services as a minister, he must file the waiver certificate on or before the due date of his income tax return for 1963, or any extension thereof. A waiver certificate filed after such date will be invalid. It should be noted that although by reason of section 1402(b)(1)(C) no part of the $400 represents "self-employment income," nevertheless the entire $400 constitutes "net earnings from self-employment" for purposes of fulfilling the requirements of section 1402(e)(2).

Example (3). M, who files his income tax returns on a calendar year basis, was ordained as a minister in June 1961. During 1961 he receives $410 for services performed in the exercise of his ministry. In addition to his ministerial services, M is engaged during the year 1961 in a mercantile venture from which he derives net earnings from self-employment in the amount of $1,000. The expenses incurred by him in connection with his ministerial services during 1961 and which are allowable deductions under chapter 1 of the Internal Revenue Code amount to $410. During 1962 and 1963, M has net earnings from self-employment in amounts of $1,200 and $1,500, respectively, and some part of each of these amounts is from the exercise of his ministry. The deductions allowed in each of the years 1962 and 1963 by chapter 1 which are attributable to the gross income derived by M from the exercise of his ministry in each of such years, respectively, do not equal or exceed such gross income in such year. If M wishes to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his service as a minister, he must file a waiver certificate on or before the due date of his income tax return (including any extension thereof) for 1963.

Example (4). M, a licensed minister who makes his income tax returns on the basis of a calendar year, derived net earnings of $400 or more from the exercise of his ministry for two or more of the taxable years 1955 to 1961, inclusive. In such case, if M wishes to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to his services as a minister, he must file the waiver certificate on or be-

fore the due date (April 16, 1962) prescribed for filing his income tax return for 1961, or any extension thereof. A waiver certificate filed after such date will be invalid.

(b) *Effect of death.* Except as provided in section 1402(e) (5) and (6) and §§ 1.1402(e)(5)–1 and 1.1402(e)(6)–1, the right of an individual to file a waiver certificate shall cease from his death. Thus, except as provided in such sections, the surviving spouse, administrator, or executor of a decedent shall not be permitted to file a waiver certificate for such decedent.

(c) *Computation of net earnings without regard to election.* For the purpose of this section net earnings from self-employment shall be determined without regard to the fact that, without an election under section 1402(e), the performance of services by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, or the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, does not constitute a trade or business for purposes of the tax on self-employment income.

§ 1.1402(e)(3) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; effective date of certificate.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners.* * * *

(3)(A) *Effective date of certificate.* A certificate filed pursuant to this subsection shall be effective for the taxable year immediately preceding the earliest taxable year for which, at the time the certificate is filed, the period for filing a return (including any extension thereof) has not expired, and for all succeeding taxable years. An election made pursuant to this subsection shall be irrevocable.

(B) Notwithstanding the first sentence of subparagraph (A), if an individual filed a certificate on or before the date of enactment of this subparagraph which (but for this subparagraph) is effective only for the first taxable year ending after 1956 and all succeeding taxable years, such certificate shall be effective for his first taxable year ending after 1955 and all succeeding taxable years if—

(i) Such individual files a supplemental certificate after the date of enactment of this subparagraph and on or before April 15, 1962,

(ii) The tax under section 1401 in respect of all such individual's self-employment income (except for underpayments of tax attributable to errors made in good faith) for his first taxable year ending after 1955 is paid on or before April 15, 1962, and

(iii) In any case where refund has been made of any such tax which (but for this subparagraph) is an overpayment, the amount refunded (including any interest paid under section 6611) is repaid on or before April 15, 1962.

The provisions of section 6401 shall not apply to any payment or repayment described in this subparagraph.

[Sec. 1402(e)(3) as added by sec. 201(c)(3), Social Security Amendments 1954 (68 Stat. 1089); as amended by sec. 1, Act of Aug. 30, 1957 (Pub. Law 85–239, 71 Stat. 521); sec. 101(b), Social Security Amendments 1960 (74 Stat. 926)]

SECTION 101. [Social Security Amendments of 1960]. * * *

(d) In the case of a certificate or supplemental certificate filed pursuant to section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1954—

(1) For purposes of computing interest, the due date for the payment of the tax under section 1401 which is due for any taxable year ending before 1959 solely by reason of the filing of a certificate which is effective under such section 1402(e)(3)(B) or (5) shall be April 15, 1962;

(2) The statutory period for the assessment of any tax for any such year which is attributable to the filing of such certificate shall not expire before the expiration of 3 years from such due date; and

(3) For purposes of section 6651 of such Code (relating to addition to tax for failure to file tax return), the amount of tax required to be shown on the return shall not include such tax under section 1401.

[Sec. 101(d), Social Security Amendments 1960 (74 Stat. 927)]

§ 1.1402(e)(3)–1 Effective date of waiver certificate.

(a) *Filed before August 31, 1957*—(1) *In general.* A certificate on Form 2031 filed by an individual before August 31, 1957, in accordance with the provisions of section 1402(e) in effect at the time the certificate is filed, shall be effective for the first taxable year with respect to which it is filed, and all subsequent taxable years. In order for a certificate filed by an individual before August 31, 1957, to be effective under section 1402(e), the certificate must be made effective for either the first or second taxable year ending after 1954 in which the individual has net earnings from self-employment of $400 or more (determined as provided in paragraph (c) of § 1.1402(e)(2)–1) some part of which is derived from service of the character with respect to which an election may be made. However, a certificate on Form 2031, filed before August 31, 1957, even though filed within the time specified in paragraph (a)(1)(ii) of § 1.1402(e)(2)–1, may not be effective, except as provided in subparagraph (2) of this paragraph, for any taxable year with respect to which the due date for filing the individual's income tax return (including any extension thereof) has expired at the time such certificate is filed. Further, a certificate on Form 2031 may not be effective for any taxable year ending before 1955. In order for a certificate filed before August 31, 1957, except for the filing of a supplemental certificate, to be effective for the first or second taxable year ending after 1954 in which the individual has net earnings from self-employment (determined as provided in paragraph (c) of § 1.1402(e)(2)–1) some part of which is derived from service of the character with respect to which an election may be made, the certificate on Form 2031 must be filed on or before the due date for filing the income tax return of the individual for such first or second taxable year, respectively, or any extension thereof.

(2) *Supplemental certificates*—(i) *Filed before due date of 1958 return.* If under subparagraph (1) of this paragraph the certificate is effective only for the individual's third or fourth taxable year ending after 1954 and all succeeding taxable years, the individual may make such a certificate effective for his first taxable year ending after 1955 and all succeeding taxable years by filing a supplemental certificate on Form 2031. To be valid the supplemental certificate must be filed after August 30, 1957, and on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956 and must be otherwise in accordance with § 1.1402(e)(1)–1.

Example. M, who files his income tax returns on a calendar year basis, was ordained as a minister in 1956, and his net earnings from service performed in the exercise of his ministry during such year were $400 or more. M had no net earnings from the exercise of his ministry during 1957. On July 15, 1957, M filed a waiver certificate and indicated thereon that it was to become effective for the taxable year 1958. At the time of filing, the certificate was effective for 1958 and all succeeding taxable years. Since the certificate was not filed on or before April 15, 1957 (the due date of M's income tax return for the taxable year 1956), and since there was no extension of time for filing his 1956 income tax return, the certificate was not, at the time of filing, effective for the taxable year 1956. M files a supplemental certificate on April 15, 1958. By the filing of the supplemental certificate, the certificate filed by M on July 15, 1957, was made effective for the year 1956 and all succeeding taxable years.

(ii) *Filed after September 13, 1960, and on or before April 16, 1962.* If under subparagraph (1) of this paragraph the certificate is effective only for the individual's first taxable year ending after 1956 and all succeeding taxable years, the individual may make such certificate effective for his first taxable year ending after 1955 and all succeeding taxable years by—

(*a*) Filing a supplemental certificate on Form 2031 after September 13, 1960, and before April 17, 1962;

(*b*) Paying on or before April 16, 1962, the tax under section 1401 in respect of all the individual's self-employment income (except for underpayments of tax attributable to errors made in good faith) for his first taxable year ending after 1955; and

(*c*) By repaying on or before April 16, 1962, the amount of any refund (including any interest paid under section 6611) that has been made of any such tax which (but for section 1402(e)(3)(B)) is an overpayment.

Any payment or repayment described in section 1402(e)(3)(B) and in this subparagraph shall not constitute an overpayment within the meaning of section 6401 which relates to amounts treated as overpayments. See section 6401 and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).

Example. M, who files his income tax returns on a calendar year basis, was ordained as a minister in 1956, and his net earnings from service performed in the exercise of his ministry during each of the years 1956 and 1957 were $400 or more. On July 15, 1957, M filed a waiver certificate which became effective, at the time of filing, for 1957 and all succeeding taxable years. Since the certificate was not filed on or before April 15, 1957 (the due date of M's income tax return for the taxable year 1956),

and since there was no extension of time for filing his 1956 income tax return, the certificate was not, at the time of filing, effective for the taxable year 1956. M files a supplemental certificate on April 17, 1961. If, in addition to the filing of the supplemental certificate, M pays on or before April 16, 1962, the self-employment tax in respect of all his self-employment income (except for underpayments of tax attributable to errors made in good faith) for his taxable year 1956, and repays, on or before April 16, 1962, the amount of any refund (including any interest paid under section 6611) that has been made of any such tax which (but for section 1402(e)(3)(B)) is an overpayment, the certificate filed by M on July 15, 1957, becomes effective for the year 1956 and all succeeding taxable years.

(b) *Filed after August 30, 1957, and before the due date of the 1958 return.* A certificate on Form 2031 filed by an individual after August 30, 1957, but on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956, in accordance with the provisions of section 1402(e) in effect at the time the certificate is filed, shall be effective for his first taxable year ending after 1955, and all subsequent taxable years.

(c) *Filed after due date of 1958 return.* Except as otherwise provided in § 1.1402(e)(5)–1, a certificate on Form 2031 filed by an individual in accordance with the provisions of §§ 1.1402(e)(1)–1 and 1.1402(e)(2)–1, inclusive, after the due date of the return (including any extension thereof) for his second taxable year ending after 1956 shall be effective for the taxable year immediately preceding the earliest taxable year for which, at the time the certificate is filed, the period for filing a return (including any extension thereof) has not expired, and for all succeeding taxable years.

Example. M, a duly ordained minister of a church, makes his income tax returns on the basis of a calendar year. M has not been granted an extension of time for filing any return. On April 15, 1963, the due date of his income tax return for 1962, M files a waiver certificate pursuant to § 1.1402(e)(1)–1 and within the time limitation set forth in § 1.1402(e)(2)–1. On April 15, 1963, the year 1962 is the earliest taxable year for which the period for filing a return has not expired. Consequently, M's certificate is effective for 1961 and all succeeding taxable years. M must report and pay any self-employment tax due for 1961 and 1962. (The tax, if any, for 1962 is due on April 15, 1963.) Inasmuch as the due date of the tax for 1961 is April 16, 1962, M must pay interest on any tax due for 1961. For provisions relating to such interest, see § 301.6601–1 of Part 301 of this chapter (Regulations on Procedure and Administration).

(d) *Election irrevocable.* An election which has become effective pursuant to this section is irrevocable. A certificate may not be withdrawn after June 30, 1961.

§ 1.1402(e)(4) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; treatment of certain remuneration paid in 1955 and 1956 as wages.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners.* * * *

(4) *Treatment of certain remuneration paid in 1955 and 1956 as wages.* If—

(A) In 1955 or 1956 an individual was paid remuneration for service described in section 3121(b)(8)(A) which was erroneously treated by the organization employing him (under a certificate filed by such organization pursuant to section 3121(k) or the corresponding section of prior law) as employment (within the meaning of chapter 21), and

(B) On or before the date of the enactment of this paragraph the taxes imposed by sections 3101 and 3111 were paid (in good faith and upon the assumption that the insurance system established by title II of the Social Security Act had been extended to such service) with respect to any part of the remuneration paid to such individual for such service,

then the remuneration with respect to which such taxes were paid, and with respect to which no credit or refund of such taxes (other than a credit or refund which would be allowable if such service had constituted employment) has been obtained on or before the date of the enactment of this paragraph, shall be deemed (for purposes of this chapter and chapter 21) to constitute remuneration paid for employment and not net earnings from self-employment.

[Sec. 1402(e)(4) as added by sec. 2, Act of Aug. 30, 1957 (Pub. Law 85–239, 71 Stat. 522)]

§ 1.1402(e)(4)–1 Treatment of certain remuneration paid in 1955 and 1956 as wages.

If in 1955 or 1956 an individual was paid remuneration for service described in section 3121(b)(8)(A) which was erroneously treated by the organization employing him (under a certificate filed by such organization pursuant to section 3121(k) or the corresponding section of prior law) as employment, within the meaning of the Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code), and if on or before August 30, 1957, the taxes imposed by sections 3101 and 3111 were paid (in good faith and upon the assumption that the insurance system established by title II of the Social Security Act had been extended to such service) with respect to any part of the remuneration paid to such individual for such service, then the remuneration with respect to which such taxes were paid, and with respect to which no credit or refund of such taxes (other than a credit or refund which would be allowable if such service had constituted employment) has been obtained either by the employer or the employee on or before August 30, 1957, shall be deemed, for purposes of the Self-Employment Contributions Act of 1954 and the Federal Insurance Contributions Act, to constitute remuneration paid for employment and not net earnings from self-employment. For regulations relating to section 3121(b)(8)(A) and (k), see §§ 31.3121(b)(8)–1 and 31.3121(k)–1 of Subpart B of Part 31 of this chapter (Employment Tax Regulations).

§ 1.1402(e)(5) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; optional provision for certain certificates filed on or before April 15, 1962.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners.* * * *

(5) *Optional provision for certain certificates filed on or before April 15, 1962.* In any case where an individual has derived earnings, in any taxable year ending after 1954 and before 1960, from the performance of service described in subsection (c)(4), or in subsection (c)(5) (as in effect prior to the enactment of this paragraph) insofar as it related to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, and has reported such earnings as self-employment income on a return filed on or before the date of the enactment of this paragraph and on or before the due date prescribed for filing such return (including any extension thereof)—

(A) A certificate filed by such individual (or a fiduciary acting for such individual or his estate, or his survivor within the meaning of section 205(c)(1)(C) of the Social Security Act) after the date of the enactment of this paragraph and on or before April 15, 1962, may be effective, at the election of the person filing such certificate, for the first taxable year ending after 1954 and before 1960 for which such a return was filed, and for all succeeding taxable years, rather than for the period prescribed in paragraph (3), and

(B) A certificate filed by such individual on or before the date of the enactment of this paragraph which (but for this subparagraph) is ineffective for the first taxable year ending after 1954 and before 1959 for which such a return was filed shall be effective for such first taxable year, and for all succeeding taxable years, provided a supplemental certificate is filed by such individual (or a fiduciary acting for such individual or his estate, or his survivor within the meaning of section 205(c)(1)(C) of the Social Security Act) after the date of the enactment of this paragraph and on or before April 15, 1962,

but only if—

(i) The tax under section 1401 in respect of all such individual's self-employment income (except for underpayments of tax attributable to errors made in good faith), for each such year ending before 1960 in the case of a certificate described in subparagraph (A) or for each such year ending before 1959 in the case of a certificate described in subparagraph (B), is paid on or before April 15, 1962, and

(ii) In any case where refund has been made of any such tax which (but for this paragraph) is an overpayment, the amount refunded (including any interest paid under section 6611) is repaid on or before April 15, 1962.

The provisions of section 6401 shall not apply to any payment or repayment described in this paragraph.

[Sec. 1402(e)(5) as added by sec. 101(c), Social Security Amendments 1960 (74 Stat. 927)]

SECTION 101. [Social Security Amendments of 1960]. * * *

(d) In the case of a certificate or supplemental certificate filed pursuant to section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1954—

(1) For purposes of computing interest, the due date for the payment of the tax under section 1401 which is due for any taxable year ending before 1959 solely by reason of the filing of a certificate which is effective under such section 1402(e)(3)(B) or (5) shall be April 15, 1962;

(2) The statutory period for the assessment of any tax for any such year which is attributable to the filing of such certificate shall not expire before the expiration of 3 years from such due date; and

(3) For purposes of section 6651 of such Code (relating to addition to tax for failure to file tax return), the amount of tax re-

quired to be shown on the return shall not include such tax under section 1401.

[Sec. 101(d), Social Security Amendments 1960 (74 Stat. 927)]

§ 1.1402(e)(5)–1 Optional provision for certain certificates filed before April 15, 1962.

(a) *Certificates.* (1) The optional provision contained in section 1402(e)(5)(A) may be applied to a certificate on Form 2031 filed within the period September 14, 1960, to April 16, 1962, inclusive, in the case of a duly ordained, commissioned, or licensed minister of a church, a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner, who has derived net earnings, in any taxable year ending after 1954 and before 1960, from the performance of service in the exercise of his ministry, in the exercise of duties required by his religious order, or in the exercise of his profession as a Christian Science practitioner, respectively, and who has reported such earnings as self-employment income on a return filed before September 14, 1960, and on or before the date prescribed for filing such return (including any extension thereof). The certificate may be filed by such minister, member of a religious order, or Christian Science practitioner or by a fiduciary acting for such individual or his estate, or by his survivor within the meaning of section 205(c)(1)(C) of the Social Security Act, and it must be filed after September 13, 1960, and on or before April 16, 1962. Subject to the conditions stated in subparagraph (2) of this paragraph, such certificate may be effective at the election of the person filing it, for the first taxable year ending after 1954 and before 1960 for which a return, as described in the first sentence of this subparagraph, was filed, and for all succeeding taxable years, rather than for the period prescribed in § 1.1402(e)(3)–1. The election for retroactive application of the certificate may be made by indicating on the certificate the first taxable year for which it is to be effective and that such year is the first taxable year ending after 1954 and before 1960 for which the minister, member of a religious order, or Christian Science practitioner filed an income tax return on which he reported net earnings for such year from the exercise of his ministry, the exercise of duties required by his religious order, or the exercise of his profession as a Christian Science practitioner, as the case may be, and by fulfilling the conditions prescribed in subparagraph (2) of this paragraph.

(2) A certificate to which subparagraph (1) of this paragraph relates may be effective for a taxable year prior to the taxable year immediately preceding the earliest taxable year for which, at the time the certificate is filed, the period for filing a return (including any extension thereof) has not expired, only if the following conditions are met:

(i) The tax under section 1401 is paid on or before April 16, 1962, in respect of all self-employment income (whether or not derived from the performance of service by the individual in the exercise of his ministry, in the exercise of duties required by his religious order, or in the exercise of his profession as a Christian Science practitioner, as the case may be) for the first taxable year ending after 1954 and before 1960 for which such individual has filed a return, as described in subparagraph (1) of this paragraph, and for each succeeding taxable year ending before 1960; and

(ii) In any case where refund has been made of any such tax which (but for section 1402(e)(5)) is an overpayment, the amount refunded (including any interest paid under section 6611) is repaid on or before April 16, 1962. For regulations under section 6611 (relating to interest on overpayments), see § 301.6611–1 of Part 301 of this chapter (Regulations on Procedure and Administration).

(b) *Supplemental certificates.* (1) Subject to the conditions stated in subparagraph (2) of this paragraph, a certificate on Form 2031 filed on or before September 13, 1960, by a minister, member of a religious order, or a Christian Science practitioner described in paragraph (a)(1) of this section and which (but for section 1402(e)(5)(B)) is ineffective for the first taxable year ending after 1954 and before 1959 for which such a return as described in paragraph (a)(1) of this section was filed by such individual, shall be effective for such first taxable year and for all succeeding taxable years, provided a supplemental certificate is filed by such individual or by a fiduciary acting for him or his estate, or by his survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act), after September 13, 1960 and on or before April 16, 1962.

(2) The filing of a supplemental certificate pursuant to subparagraph (1) of this paragraph will give retroactive effect to a certificate to which such subparagraph applies only if the following conditions are met:

(i) The tax under section 1401 is paid on or before April 16, 1962, in respect of all self-employment income (whether or not attributable to earnings as a minister, member of a religious order, or Christian Science practitioner) for the first taxable year for which the certificate is retroactively effective and for each subsequent year ending before 1959; and

(ii) In any case where refund has been made of any such tax which (but for section 1402(d)(5)) is an overpayment, the amount refunded (including any interest paid under section 6611) is repaid on or before April 16, 1962.

(c) *Underpayment of tax.* For purposes of this section, any underpayment of the tax which is attributable to an error made in good faith will not invalidate an election which is otherwise valid.

(d) *Nonapplicability of section 6401.* Any payment or repayment described in paragraph (a)(2) or paragraph (b)(2) of this section shall not constitute an overpayment within the meaning of section 6401 which relates to amounts treated as overpayments. For the provisions of section 6401 and the regulations thereunder, see §§ 301.6401 and 301.6401–1 of Part 301 of this chapter (Regulations on Procedure and Administration).

§ 1.1402(e)(6) Statutory provisions; definitions; ministers, members of religious orders, and Christian Science practitioners; certificate filed by fiduciary or survivor on or before April 15, 1962.

SEC. 1402. *Definitions.* * * *

(e) *Ministers, members of religious orders, and Christian Science practitioners.* * * *

(6) *Certificate filed by fiduciaries or survivors on or before April 15, 1962.* In any case where an individual, whose death has occurred after September 12, 1960, and before April 16, 1962, derived earnings from the performance of services described in subsection (c)(4), or in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, a certificate may be filed after the date of enactment of this paragraph, and on or before April 15, 1962, by a fiduciary acting for such individual's estate or by such individual's survivor within the meaning of section 205(c)(1)(C) of the Social Security Act. Such certificate shall be effective for the period prescribed in paragraph (3)(A) as if filed by the individual on the day of his death.

[Sec. 1402(e)(6) as added by sec. 202(a), Social Security Amendments 1961 (75 Stat. 141)]

§ 1.1402(e)(6)–1 Certificates filed by fiduciaries or survivors on or before April 15, 1962.

In any case in which an individual whose death has occurred after September 12, 1960, and before April 16, 1962, derived earnings from the performance of services as a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, as a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) in the exercise of duties required by such order, or in the exercise of his profession as a Christian Science practitioner, a waiver certificate on Form 2031 may be filed after June 30, 1961 (the date of enactment of the Social Security Amendments of 1961), and on or before April 16, 1962, by a fiduciary acting for such individual's estate or by such individual's survivor within the meaning of section 205(c)(1)(C) of the Social Security Act. Such certificates shall be effective for the period prescribed in section 1402(e)(3)(A) (see § 1.1402(e)(3)–1(c)) as if filed by the individual on the date of his death.

§ 1.1402(f) Statutory provisions; definitions; partner's taxable year ending as the result of death.

SEC. 1402. *Definitions.* * * *

(f) *Partner's taxable year ending as the result of death.* In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month fol-

lowing the month in which such partner died. For purposes of this subsection—

(1) In determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) The term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

[Sec. 1402(f) as added by sec. 403(a), Social Security Amendments 1958 (72 Stat. 1043)]

SEC. 403. [Social Security Amendments of 1958]. * * *

(b) *Effective dates.* (1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply only with respect to individuals who die after the date of the enactment of this Act.

(2) In the case of an individual who died after 1955 and on or before the date of the enactment of this Act, the amendment made by subsection (a) shall apply only if—

(A) Before January 1, 1960, there is filed a return (or amended return) of the tax imposed by chapter 2 of the Internal Revenue Code of 1954 for the taxable year ending as a result of his death, and

(B) In any case where the return is filed solely for the purpose of reporting net earnings from self-employment resulting from the amendment made by subsection (a), the return is accompanied by the amount of tax attributable to such net earnings.

In any case described in the preceding sentence, no interest or penalty shall be assessed or collected on the amount of any tax due under chapter 2 of such Code solely by reason of the operation of section 1402(f) of such Code.

[Sec. 403(b), Social Security Amendments 1958 (72 Stat. 1044)]

§ 1.1402(f)–1 Computation of partner's net earnings from self-employment for taxable year which ends as result of his death.

(a) *Taxable years ending after August 28, 1958*—(1) *In general.* The rules for the computation of a partner's net earnings from self-employment are set forth in paragraphs (d) to (g), inclusive, of § 1.1402(a)–2. In addition to the net earnings from self-employment computed under such rules for the last taxable year of a deceased partner, if a partner's taxable year ends after August 28, 1958, solely because of death, and on a day other than the last day of the partnership's taxable year, the deceased partner's net earnings from self-employment for such year shall also include so much of the deceased partner's distributive share of partnership ordinary income or loss (see subparagraph (3) of this paragraph) for the taxable year of the partnership in which his death occurs as is attributable to an interest in the partnership prior to the month following the month of his death.

(2) *Computation.* (i) The deceased partner's distributive share of partnership ordinary income or loss for the partnership taxable year in which he died shall be determined by applying the rules contained in paragraphs (d) to (g), inclusive, of § 1.1402(a)–2, except that paragraph (e) shall not apply.

(ii) The portion of such distributive share to be included under this section in the deceased partner's net earnings from self-employment for his last taxable year shall be determined by treating the ordinary income or loss constituting such distributive share as having been realized or sustained ratably over the period of the partnership taxable year during which the deceased partner had an interest in the partnership and during which his estate, or any other person succeeding by reason of his death to rights with respect to his partnership interest, held such interest in the partnership or held a right with respect to such interest. The amount to be included under this section in the deceased partner's net earnings from self-employment for his last taxable year will, therefore, be determined by multiplying the deceased partner's distributive share of partnership ordinary income or loss for the partnership taxable year in which he died, as determined under subdivision (i) of this subparagraph, by a fraction, the denominator of which is the number of calendar months in the partnership taxable year over which the ordinary income or loss constituting the deceased partner's distributive share of partnership income or loss for such year is treated as having been realized or sustained under the preceding sentence and the numerator of which is the number of calendar months in such partnership taxable year that precede the month following the month of his death.

(3) *Definition of "deceased partner's distributive share".* For the purpose of this section, the term "deceased partner's distributive share" includes the distributive share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest. It does not include any share attributable to a partnership interest which was not held by the deceased partner at the time of his death. Thus, if a deceased partner's estate should acquire an interest in a partnership additional to the interest to which it succeeded upon the death of the deceased partner, the amount of the distributive share attributable to such additional interest acquired by the estate would not be included in computing the "deceased partner's distributive share" of the partnership's ordinary income or loss for the partnership taxable year.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). B, an individual who files his income tax returns on the calendar year basis, is a member of the ABC partnership, the taxable year of which ends on June 30. B dies on October 17, 1958, and his estate succeeds to his partnership interest and continues as a partner in its own right under local law until June 30, 1959. B's distributive share of the partnership's ordinary income, as determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2, for the taxable year of the partnership ended June 30, 1958 is $2,400. His distributive share, including the share of his estate, of such partnership's ordinary income, as determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2 (with the exception of paragraph (e)), for the taxable year of the partnership ended June 30, 1959 is $4,500. The portion of such $4,500 attributable to an interest in the partnership prior to the month following the month in which he died is $4,500×11/12 (4 being the number of months in the partnership taxable year in which B died which precede the month following the month of his death and 12 being the number of months in such partnership taxable year in which B and his estate had an interest in the partnership) or $1,500. The amount to be included in the deceased partner's net earnings from self-employment for his last taxable year is $3,900 ($2,400 plus $1,500).

Example (2). If in the preceding example B's estate is entitled to only $1,000, the amount of B's distributive share of partnership ordinary income for the period July 1, 1958 through October 17, 1958, such $1,000 is considered to have been realized ratably over the period preceding B's death and will be included in B's net earnings from self-employment for his last taxable year.

Example (3). X, who reports his income on a calendar year basis, is a member of a partnership which also reports its income on a calendar year basis. X dies on June 30, 1959, and his estate succeeds to his partnership interest and continues as a partner in its own right under local law. On September 15, 1959, X's estate sells the partnership interest to which it succeeded on the death of X. X's distributive share of partnership income for 1959 is $5,500. $600 of such amount is X's share of the gain from the sale of a capital asset which occurs on May 1, 1959, and $400 of such amount is the estate's share of the gain from the sale of a capital asset which occurs on July 15, 1959. The remainder of such amount is income from services rendered. X's distributive share of partnership ordinary income for 1959, as determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2 (with the exception of paragraph (e)), is $4,500 ($5,500 minus $1,000). The portion of such share attributable to an interest in the partnership prior to the month following the month of his death is $4,500×6/8.5 (6 being the number of months in the partnership taxable year in which X died as precede the month following the month of his death and 8.5 being the number of months in such partnership taxable year in which X and his estate had an interest in the partnership) or $3,176.47.

(b) *Options available to farmers*—(1) *Special rule.* In determining whether the optional method available to a member of a farm partnership in computing his net earnings from self-employment may be applied, and in applying such method, it is necessary to determine the partner's distributive share of partnership gross income and the partner's distributive share of income described in section 702(a)(9). See section 1402(a) and § 1.1402(a)–15. If section 1402(f) and this section apply, or may be made applicable under section 403(b)(2) of the Social Security Amendments of 1958 and paragraph (c) of this section, for the last taxable year of a deceased partner, such partner's distributive share of income described in section 702(a)(9) for his last taxable year shall be determined by including therein any amount which is included under section 1402(f) and this section in his net earnings from self-employment for such taxable year. Such a partner's distributive share of partnership gross income for his last taxable year shall be determined by including therein so much of the deceased partner's distributive share (see paragraph (a)(3) of this section) of partnership gross income, as defined in section 1402(a) and paragraph (b) of § 1.1402(a)–15, for the partnership taxable year

in which he died as is attributable to an interest in the partnership prior to the month following the month of his death. Such allocation shall be made in the same manner as is prescribed in paragraph (a)(2) of this section for determining the portion of a deceased partner's distributive share of partnership ordinary income or loss to be included under section 1402(f) and this section in his net earnings from self-employment for his last taxable year.

(2) *Examples.* The principles set forth in this paragraph may be illustrated by the following examples:

Example (1). X, an individual who files his income tax returns on a calendar year basis, is a member of the XYZ farm partnership, the taxable year of which ends on March 31. X dies on May 31, 1959, and his estate succeeds to his partnership interest and continues as a partner in its own right under local law until March 31, 1960. X's distributive share of the partnership's ordinary income, determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2, for the taxable year of the partnership ended March 31, 1959, is $1,200. His distributive share, including the share of his estate, of such partnership's ordinary loss as determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2 (with the exception of paragraph (e)), for the taxable year of the partnership ended March 31, 1960, is $600. The portion of such $600 attributable to an interest in the partnership prior to the month following the month in which he died is $600 × 2/12 (2 being the number of months in the partnership taxable year in which X died which precede the month following the month of his death and 12 being the number of months in such partnership taxable year in which X and his estate had an interest in the partnership) or $100. X is also a member of the ABX farm partnership, the taxable year of which ends on May 31. His distributive share of the partnership loss described in section 702(a)(9) for the partnership taxable year ending May 31, 1959, is $200. Section 1402(f) and this section do not apply with respect to such $200 since X's last taxable year ends, as a result of his death, with the taxable year of the ABX partnership. Under this paragraph the $100 loss must be included in determining X's distributive share of XYZ partnership income described in section 702(a)(9) for the purpose of applying the optional method available to farmers for computing net earnings from self-employment. Further, the resulting $1,100 of income must be aggregated, pursuant to paragraph (c) of § 1.1402(a)–15, with the $200 loss, X's distributive share of ABX partnership loss described in section 702(a)(9), for purposes of applying such option. The representative of X's estate may exercise the option described in paragraph (a)(2)(ii) of § 1.1402(a)–15, provided the portion of X's distributive share of XYZ partnership gross income for the taxable year ended March 31, 1960, attributable to an interest in the partnership prior to the month following the month in which he died (the allocation being made in the manner prescribed for allocating his $600 distributive share of XYZ partnership loss for such year), when aggregated with his distributive share of XYZ partnership gross income for the partnership taxable year ended March 31, 1959, and with his distributive share of ABX partnership gross income for the partnership taxable year ended May 31, 1959, results in X having more than $1,800 of gross income from the trade or business of farming. If such aggregate amount of gross income is not more than $1,800, the option described in paragraph (a)(2)(i) of § 1.1402(a)–15, is available.

Example (2). A, a sole proprietor engaged in the business of farming, files his income tax returns on a calendar year basis. A is also a member of a partnership engaged in an agricultural activity. The partnership files its returns on the basis of a fiscal year ending March 31. A dies June 29, 1959. A's gross income from farming as a sole proprietor for the six-month period comprising his taxable year which ends because of death is $1,200 and his actual net earnings from self-employment based thereon is $300. As of March 31, 1959, A's distributive share of the gross income of the farm partnership is $2,000 and his distributive share of income described in section 702(a)(9) based thereon is $900. The amount of A's distributive share of the partnership's ordinary income for its taxable year ended March 31, 1960, which may be included in his net earnings from self-employment under section 1402(f) and paragraph (a) of this section is $200. The amount of the deceased partner's distributive share of partnership gross income attributable to an interest in the partnership prior to the month following the month of his death as is determined, pursuant to subparagraph (1) of this paragraph, under paragraph (a) of this section is $1,800. An aggregation of the above figures produces a gross income from farming of $5,000 and actual net earnings from self-employment of $1,400. Under these circumstances none of the options provided by section 1402(a) may be used. If the actual net earnings from self-employment had been less than $1,200, the option described in paragraph (a)(2)(ii) of § 1.1402(a)–15 would have been available.

(c) *Taxable years ending after 1955 and on or before August 28, 1958*—(1) *Requirement of election.* If a partner's taxable year ended, as a result of his death, after 1955 and on or before August 28, 1958, the rules set forth in paragraph (a) of this section may be made applicable in computing the deceased partner's net earnings from self-employment for his last taxable year provided that—

(i) Before January 1, 1960, there is filed, by the person designated in section 6012(b)(1) and paragraph (b)(1) of § 1.6012–3, a return (or amended return) of the tax imposed by chapter 2 for the taxable year ending as a result of death, and

(ii) Such return, if filed solely for the purpose of reporting net earnings from self-employment resulting from the enactment of section 1402(f), is accompanied by the amount of tax attributable to such net earnings.

(2) *Administrative rule of special application.* Notwithstanding the provisions of sections 6601, 6651, and 6653 (see such sections and the regulations thereunder) no interest or penalty shall be assessed or collected on the amount of any self-employment tax due solely by reason of the operation of section 1402(f) in the case of an individual who died after 1955 and before August 29, 1958.

§ 1.1402(g) Statutory provisions; definitions; treatment of certain remuneration erroneously reported as net earnings from self-employment.

SEC. 1402. *Definitions.* * * *

(g) *Treatment of certain remuneration erroneously reported as net earnings from self-employment.* If—

(1) An amount is erroneously paid as tax under section 1401, for any taxable year ending after 1954 and before 1962, with respect to remuneration for service described in section 3121(b)(8) (other than service described in section 3121(b)(8)(A)), and such remuneration is reported as self-employment income on a return filed on or before the due date prescribed for filing such return (including any extension thereof),

(2) The individual who paid such amount (or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act)) requests that such remuneration be deemed to constitute net earnings from self-employment,

(3) Such request is filed after the date of the enactment of this paragraph and on or before April 15, 1962,

(4) Such remuneration was paid to such individual for services performed in the employ of an organization which, on or before the date on which such request is filed, has filed a certificate pursuant to section 3121(k), and

(5) No credit or refund of any portion of the amount erroneously paid for such taxable year as tax under section 1401 (other than a credit or refund which would be allowable if such tax were applicable with respect to such remuneration) has been obtained before the date on which such request is filed or, if obtained, the amount credited or refunded (including any interest under section 6611) is repaid on or before such date,

then, for purposes of this chapter and chapter 21, any amount of such remuneration which is paid to such individual before the calendar quarter in which such request is filed (or before the succeeding quarter if such certificate first becomes effective with respect to services performed by such individual in such succeeding quarter), and with respect to which no tax (other than an amount erroneously paid as tax) has been paid under chapter 21, shall be deemed to constitute net earnings from self-employment and not remuneration for employment. For purposes of section 3121(b)(8)(B) (ii) and (iii), if the certificate filed by such organization pursuant to section 3121(k) is not effective with respect to services performed by such individual on or before the first day of the calendar quarter in which the request is filed, such individual shall be deemed to have become an employee of such organization (or to have become a member of a group described in section 3121(k)(1)(E)) on the first day of the succeeding quarter.

[Sec. 1402(g), as added by sec. 105(c)(1), Social Security Amendments 1960 (74 Stat. 944)]

§ 1.1402(g)–1 Treatment of certain remuneration erroneously reported as net earnings from self-employment.

(a) *General rule.* If an amount is erroneously paid as self-employment tax, for any taxable year ending after 1954 and before 1962, with respect to remuneration for service (other than service described in section 3121(b)(8)(A)) performed in the employ of an organization described in section 501(c)(3) and exempt from income tax under section 501(a), and if such remuneration is reported as self-employment income on a return filed on or before the due date prescribed for filing such return (including any extension thereof), the individual who paid such amount (or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act)), may request that such remuneration be deemed to constitute net earnings from self-employment. If such request is filed during the period September 14, 1960, to April 16, 1962, inclusive, and on or after the date on

which the organization which paid such remuneration to such individual for services performed in its employ has filed, pursuant to section 3121(k), a certificate waiving exemption from taxes under the Federal Insurance Contributions Act, and if no credit or refund of any portion of the amount erroneously paid for such taxable year as self-employment tax (other than a credit or refund which would be allowable if such tax were applicable with respect to such remuneration) has been obtained before the date on which such request is filed or, if obtained, the amount credited or refunded (including any interest under section 6611) is repaid on or before such date, then, for purposes of the Self-Employment Contributions Act of 1954 and the Federal Insurance Contributions Act, any amount of such remuneration which is paid to such individual before the calendar quarter in which such request is filed (or before the succeeding quarter if such certificate first becomes effective with respect to services performed by such individual in such succeeding quarter) and with respect to which no tax (other than an amount erroneously paid as tax) has been paid under the Federal Insurance Contributions Act, shall be deemed to constitute net earnings from self-employment and not remuneration for employment. If the certificate filed by such organization pursuant to section 3121(k) is not effective with respect to services performed by such individual on or before the first day of the calendar quarter in which the request is filed, then, for purposes of section 3121(b)(8)(B) (ii) and (iii), such individual shall be deemed to have become an employee of such organization (or to have become a member of a group, described in section 3121(k)(1)(E), of employees of such organization) on the first day of the succeeding quarter.

(b) *Request for validation.* (1) No particular form is prescribed for making a request under paragraph (a) of this section. The request should be in writing, should be signed and dated by the person making the request, and should indicate clearly that it is a request that, pursuant to section 1402(g) of the Code, remuneration for service described in section 3121(b)(8) (other than service described in section 3121(b)(8)(A)) erroneously reported as self-employment income for one or more specified years be deemed to constitute net earnings from self-employment and not remuneration for employment. In addition, the following information shall be shown in connection with the request:

(i) The name, address, and social security account number of the individual with respect to whose remuneration the request is made.

(ii) The taxable year or years (ending after 1954 and before 1962) to which the request relates.

(iii) A statement that the remuneration was erroneously reported as self-employment income on the individual's return for each year specified and that the return was filed on or before its due date (including any extension thereof).

(iv) Location of the office of the district director with whom each return was filed.

(v) A statement that no portion of the amount erroneously paid by the individual as self-employment tax with respect to the remuneration has been credited or refunded (other than a credit or refund which would have been allowable if the tax had been applicable with respect to the remuneration); or, if a credit or refund of any portion of such amount has been obtained, a statement identifying the credit or refund and showing how and when the amount credited or refunded, together with any interest received in connection therewith, was repaid.

(vi) The name and address of the organization which paid the remuneration to the individual.

(vii) The date on which the organization filed a waiver certificate on Form SS–15, and the location of the office of the district director with whom it was filed.

(viii) The date on which the certificate became effective with respect to services performed by the individual.

(ix) If the request is made by a person other than the individual to whom the remuneration was paid, the name and address of that person and evidence which shows the authority of such person to make the request.

(2) The request should be filed with the district director of internal revenue with whom the latest of the returns specified in the request pursuant to subparagraph (1)(iii) of this paragraph was filed.

(c) *Cross references.* For regulations relating to section 3121(b)(8) and (k), see §§ 31.3121(b)(8)–2 and 31.3121(k)–1 of Subpart B of Part 31 of this chapter (Employment Tax Regulations). For regulations relating to exemption from income tax of an organization described in section 501(c)(3), see § 1.501(c)(3)–1.

§ 1.1403 Statutory provisions; miscellaneous provisions.

SEC. 1403. *Miscellaneous provisions*—(a) *Title of chapter.* This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) *Cross references.* (1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

[Sec. 1403 as amended by sec. 103(m), Social Security Amendments 1960 (74 Stat. 938)]

§ 1.1403–1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6017–1. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001–1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

PAR. 2. Section 1.6017–1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.6017–1 Self-employment tax returns.

(a) *In general.* (1) Every individual, other than a nonresident alien, having net earnings from self-employment, as defined in section 1402, of $400 or more for the taxable year shall make a return of such earnings. For purposes of this section, an individual who is a resident of the Virgin Islands, Puerto Rico, or (for any taxable year beginning after 1960) Guam or American Samoa is not to be considered a nonresident alien individual. See paragraph (d) of § 1.1402(b)–1. A return is required under this section if an individual has self-employment income, as defined in section 1402(b), even though he may not be required to make a return under section 6012 for purposes of the tax imposed by section 1 or 3. Provisions applicable to returns under section 6012(a) shall be applicable to returns under this section.

(2) Except as otherwise provided in this subparagraph, the return required by this section shall be made on Form 1040. The form to be used by residents of the Virgin Islands, Guam, or American Samoa is Form 1040SS. In the case of a resident of Puerto Rico who is not required to make a return of income under section 6012(a), the form to be used is Form 1040SS, except that Form 1040PR shall be used if it is furnished by the Internal Revenue Service to such resident for use in lieu of Form 1040SS.

* * * * *

(c) *Social security account numbers.* (1) Every individual making a return of net earnings from self-employment for any period commencing before January 1, 1962, is required to show thereon his social security account number, or, if he has no such account number, to make application therefor on Form SS–5 before filing such return. However, the failure to apply for or receive a social security account number will not excuse the individual from the requirement that he file such return on or before the due date thereof. Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director. The application shall be filed with a district office of the Social Security Administration or, in the case of an individual not in the United States, with the district office of the Social Security Administration at Baltimore, Maryland. An individual who has previously secured a social security account number as an employee shall use that account number on his return of net earnings from self-employment.

(2) For provisions applicable to the securing of identifying numbers and the reporting thereof on returns and schedules for periods commencing after December 31, 1961, see § 1.6109–1.

PAR. 3 Section 1.107–1 is amended by revising paragraph (a) to read as follows:

§ 1.107–1 Rental value of parsonages.

(a) In the case of a minister of the gospel, gross income does not include (1) the rental value of a home, including utilities, furnished to him as a part of his compensation, or (2) the rental allowance paid to him as part of his compensation to the extent such allowance is used by him to rent or otherwise provide a home. In order to qualify for the exclusion, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. In general, the rules provided in §1.1402 (c)–5 will be applicable to such determination. Examples of specific services the performance of which will be considered duties of a minister for purposes of section 107 include the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative duties at theological seminaries. Also, the service performed by a qualified minister as an employee of the United States (other than as a chaplain in the Armed Forces, whose service is considered to be that of a commissioned officer in his capacity as such, and not as a minister in the exercise of his ministry), or a State, Territory, or possession of the United States, or a political subdivision of any of the foregoing, or the District of Columbia, is in the exercise of his ministry provided the service performed includes such services as are ordinarily the duties of a minister.

PAR. 4. Section 1.121 is amended by revising paragraph (18) of section 121 (a), as set forth therein, and the historical note at the end thereof to read as follows:

§ 1.121 Statutory provisions; cross references to other acts.

SEC. 121. *Cross references to other acts.* (a) For the exemption of—

* * * * *

(18) Benefits under laws administered by the Veterans' Administration, see section 3101 of title 38, United States Code.

[Sec. 121(a)(18) as added by section 501(t), Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 885); sec. 2201(25), Veterans' Benefits Act of 1957 (71 Stat. 160); sec. 13(t), Act of Sept. 2, 1958 (Pub. Law 85–857), 72 Stat. 1266)]

* * * * *

PAR. 5. Section 1.1361–3 is amended by revising paragraph (a)(5) to read as follows:

§ 1.1361–3 Code provisions applicable.

(a) *Subtitle A.* * * *

* * * * *

(5) In determining self-employment income for purposes of chapter 2, subtitle A of the Code, the income of a proprietor or a partner shall be determined in accordance with paragraph (f) or (h) of § 1.1402(a)–2, as the case may be, without regard to any election under section 1361.

* * * * *

[F.R. Doc. 63–12373; Filed, Dec. 2, 1963; 8:45 a.m.]

[T.D. 6692]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Carryover of Earnings and Profits in Certain Corporate Acquisitions

On December 31, 1960, notice of proposed rule making with respect to regulations under section 381(c)(2) and (16) of the Internal Revenue Code of 1954, relating to the carryover of earnings and profits and certain obligations of the distributor or transferor corporation in certain corporate acquisitions, was published in the FEDERAL REGISTER (25 F.R. 14039). On December 28, 1961, Treasury Decision 6586, adopting the regulations as proposed under section 381(c)(2) except for certain changes including the reservation of paragraph (c) of § 1.381(c)(2)–1 (which remained outstanding as a notice of proposed rule making), was published in the FEDERAL REGISTER (26 F.R. 12551). After consideration of all such relevant matter as was presented by interested persons regarding paragraph (c) of § 1.381(c)(2)–1 as proposed, such paragraph is hereby adopted, subject to the changes set forth below:

Paragraph (c) of § 1.381(c)(2)–1 is revised to read as follows:

§ 1.381(c)(2)–1 Earnings and profits.

* * * * *

(c) *Distribution of earnings and profits pursuant to reorganization or liquidation.* (1) If, in a reorganization to which section 381(a)(2) applies, the transferor corporation pursuant to the plan of reorganization distributes to its stockholders property consisting not only of property permitted by section 354 to be received without recognition of gain, but also of other property or money, then the accumulated earnings and profits of the transferor corporation as of the close of the date of transfer shall be computed by taking into account the amount of earnings and profits properly applicable to the distribution, regardless of whether such distribution occurs before or after the close of the date of transfer.

(2) If, in a distribution to which section 381(a)(1) (relating to certain liquidations of subsidiaries) applies, the acquiring corporation receives less than 100 percent of the assets distributed by the distributor corporation, then the accumulated earnings and profits of the distributor corporation as of the close of the date of distribution shall be computed by taking into account the amount of earnings and profits properly applicable to the distributions to minority stockholders, regardless of whether such distributions occur before or after the close of the date of distribution.

* * * * *

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: November 21, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 63–12391; Filed, Dec. 2, 1963; 8:45 a.m.]

[T.D. 6693]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Gift Taxes

On October 27, 1962, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under sections 1015 and 1016 of the Internal Revenue Code of 1954 to conform the regulations to changes made by section 43(a) of the Technical Amendments Act of 1958 (72 Stat. 1640), was published in the FEDERAL REGISTER (27 F.R. 10491). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted, subject to the following addition and changes:

PARAGRAPH 1. Paragraph (a) of § 1.1015–4 is amended.

PAR. 2. Paragraph (c) of § 1.1015–5 as set forth in paragraph 3 of the notice of proposed rule making is changed.

PAR. 3. Paragraph (n) of § 1.1016–5 as set forth in paragraph 4 of the notice of proposed rule making is redesignated paragraph (p).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: November 22, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order that the Income Tax Regulations (26 CFR Part 1) may reflect the delegation of functions authorized by section 1015(a) of the Internal Revenue Code of 1954 and be made to conform to section 43(a) of the Technical Amendments Act of 1958 (Public Law 85–866, 72 Stat. 1640), such regulations are amended as follows:

PARAGRAPH 1. Section 1.1015 is amended by adding a new subsection (d) to section 1015 and by adding a historical note. As added, these provisions read as follows:

§ 1.1015 Statutory provisions; basis of property acquired by gifts and transfers in trust.

SEC. 1015. *Basis of property acquired by gifts and transfers in trust.* * * *

(d) *Increased basis for gift tax paid*—(1) *In general.* If—

(A) The property is acquired by gift on or after the date of the enactment of the Technical Amendments Act of 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) The property was acquired by gift before the date of the enactment of the Technical Amendments Act of 1958 and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) *Amount of tax paid with respect to gift.* For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) *Gifts treated as made one-half by each spouse.* For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) *Treatment as adjustment to basis.* For purposes of section 1016(b), an increase in basis under paragraph (1) shall be treated as an adjustment under section 1016(a).

(5) *Application to gifts before 1955.* With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

[Sec. 1015(d) as added by sec. 43(a), Technical Amendments Act 1958 (Public Law 85-866, 72 Stat. 1640)]

PAR. 2. Paragraph (a) of § 1.1015-1 is amended by adding a new subparagraph (3) to read as follows:

§ 1.1015-1 Basis of property acquired by gift after December 31, 1920.

(a) *General rule.* * * *

(3) If the facts necessary to determine the basis of property in the hands of the donor or the last preceding owner by whom it was not acquired by gift are unknown to the donee, the district director shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the district director finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the district director as of the date or approximate date at which, according to the best information the district director is able to obtain, such property was acquired by such donor or last preceding owner. See paragraph (e) of this section for rules relating to fair market value.

PAR. 3. Paragraph (a) of § 1.1015-4 is amended to read as follows:

§ 1.1015-4 Transfers in part a gift and in part a sale.

(a) *General rule.* Where a transfer of property is in part a sale and in part a gift, the unadjusted basis of the property in the hands of the transferee is the sum of—

(1) Whichever of the following is the greater:

(i) The amount paid by the transferee for the property, or

(ii) The transferor's adjusted basis for the property at the time of the transfer, and

(2) The amount of increase, if any, in basis authorized by section 1015(d) for gift tax paid (see § 1.1015-5).

For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor, see paragraph (e) of § 1.1001-1.

PAR. 4. There is inserted immediately after § 1.1015-4 the following new section.

§ 1.1015-5 Increased basis for gift tax paid.

(a) *General rule.* (1) (i) Subject to the conditions and limitations provided in section 1015(d), as added by the Technical Amendments Act of 1958, the basis (as determined under section 1015 (a) and paragraph (a) of § 1.1015-1) of property acquired by gift is increased by the amount of gift tax paid with respect to the gift of such property. Under section 1015(d)(1)(A), such increase in basis applies to property acquired by gift on or after September 2, 1958 (the date of enactment of the Technical Amendments Act of 1958). Under section 1015 (d)(1)(B), such increase in basis applies to property acquired by gift before September 2, 1958, and not sold, exchanged, or otherwise disposed of before such date. If section 1015(d)(1)(A) applies, the basis of the property is increased as of the date of the gift regardless of the date of payment of the gift tax. For example, if the property was acquired by gift on September 8, 1953, and sold by the donee on October 15, 1958, the basis of the property would be increased (subject to the limitation of section 1015(d)) as of September 8, 1958 (the date of the gift), by the amount of gift tax applicable to such gift even though such tax was not paid until March 1, 1959. If section 1015(d)(1)(B) applies, any increase in the basis of the property due to gift tax paid (regardless of date of payment) with respect to the gift is made as of September 2, 1958. Any increase in basis under section 1015(d) can be no greater than the amount by which the fair market value of the property at the time of the gift exceeds the basis of such property in the hands of the donor at the time of the gift. See paragraph (b) of this section for rules for determining the amount of gift tax paid in respect of property transferred by gift.

(ii) With respect to property acquired by gift before September 2, 1958, the provisions of section 1015(d) and this section do not apply if, before such date, the donee has sold, exchanged, or otherwise disposed of such property. The phrase "sold, exchanged, or otherwise disposed of" includes the surrender of a stock certificate for corporate assets in complete or partial liquidation of a corporation pursuant to section 331. It also includes the exchange of property for property of a like kind such as the exchange of one apartment house for another. The phrase does not, however, extend to transactions which are mere changes in form. Thus, it does not include a transfer of assets to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351. Nor does it include an exchange of stock or securities in a corporation for stock or securities in the same corporation or another corporation in a transaction such as a merger, recapitalization, reorganization, or other transaction described in section 368(a) or 355, with respect to which no gain or loss is recognizable for income tax purposes under section 354 or 355. If a binding contract for the sale, exchange, or other disposition of property is entered into, the property is considered as sold, exchanged, or otherwise disposed of on the effective date of the contract, unless the contract is not subsequently carried out substantially in accordance with its terms. The effective date of a contract is normally the date it is entered into (and not the date it is consummated, or the date legal title to the property passes) unless the contract specifies a different effective date. For purposes of this subdivision, in determining whether a transaction comes within the phrase "sold, exchanged, or otherwise disposed of", if a transaction would be treated as a mere change in the form of the property if it occurred in a taxable year subject to the Internal Revenue Code of 1954, it will be so treated if the transaction occurred in a taxable year subject to the Internal Revenue Code of 1939 or prior revenue law.

(2) Application of the provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). In 1938, A purchased a business building at a cost of $120,000. On September 2, 1958, at which time the property had an adjusted basis in A's hands of $60,000, he gave the property to his nephew, B. At the time of the gift to B, the property had a fair market value of $65,000 with respect to which A paid a gift tax in the amount of $7,545. The basis of the property in B's hands at the time of the gift, as determined under section 1015(a) and § 1.1015-1, would be the same as the adjusted basis in A's hands at the time of the gift, or $60,000. Under section 1015(d) and this section, the basis of the building in B's hands as of the date of the gift would be increased by the amount of the gift tax paid with respect to such gift, limited to an amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of A at the time of gift, or $5,000. Therefore, the basis of the property in B's hands immediately after the gift, both for determining gain or loss on the sale of the property, would be $65,000.

Example (2). C purchased property in 1938 at a cost of $100,000. On October 1, 1952, at which time the property had an adjusted basis of $72,000 in C's hands, he gave the property to his daughter, D. At the date of the gift to D, the property had a fair market value of $85,000 with respect to which C paid a gift tax in the amount of $11,745. On September 2, 1958, D still held the property which then had an adjusted basis in her hands of $65,000. Since the

excess of the fair market value of the property at the time of the gift to D over the adjusted basis of the property in C's hands at such time is greater than the amount of gift tax paid, the basis of the property in D's hands would be increased as of September 2, 1958, by the amount of the gift tax paid, or $11,745. The adjusted basis of the property in D's hands, both for determining gain or loss on the sale of the property, would then be $76,745 ($65,000 plus $11,745).

Example (3). On December 31, 1951, E gave to his son, F, 500 shares of common stock of the X Corporation which shares had been purchased earlier by E at a cost of $100 per share, or a total cost of $50,000. The basis in E's hands was still $50,000 on the date of the gift to F. On the date of the gift, the fair market value of the 500 shares was $80,000 with respect to which E paid a gift tax in the amount of $10,695. In 1956, the 500 shares of X Corporation stock were exchanged for 500 shares of common stock of the Y Corporation in a reorganization with respect to which no gain or loss was recognized for income tax purposes under section 354. F still held the 500 shares of Y Corporation stock on September 2, 1958. Under such circumstances, the 500 shares of X Corporation stock would not, for purposes of section 1015 (d) and this section, be considered as having been "sold, exchanged, or otherwise disposed of" by F before September 2, 1958. Therefore, the basis of the 500 shares of Y Corporation stock held by F as of such date would, by reason of section 1015(d) and this section, be increased by $10,695, the amount of gift tax paid with respect to the gift to F of the X Corporation stock.

Example (4). On November 15, 1953, G gave H property which had a fair market value of $53,000 and a basis in the hands of G of $20,000. G paid gift tax of $5,250 on the transfer. On November 16, 1956, H gave the property to J who still held it on September 2, 1958. The value of the property on the date of the gift to J was $63,000 and H paid gift tax of $7,125 on the transfer. Since the property was not sold, exchanged, or otherwise disposed of by J before September 2, 1958, and the gift tax paid on the transfer to J did not exceed $43,000 ($63,000, fair market value of property at time of gift to J, less $20,000, basis of property in H's hands at that time), the basis of property in his hands is increased on September 2, 1958, by $7,125, the amount of gift tax paid by H on the transfer. No increase in basis is allowed for the $5,250 gift tax paid by G on the transfer to H, since H had sold, exchanged, or otherwise disposed of the property before September 2, 1958.

(b) *Amount of gift tax paid with respect to a gift of property.* (1) (i) If only one gift was made during a certain calendar year, the entire amount of the gift tax paid under chapter 12 or the corresponding provisions of prior revenue laws for that calendar year is the amount of the gift tax paid with respect to the gift.

(ii) If more than one gift was made during a certain calendar year, the amount of gift tax paid under chapter 12 or the corresponding provisions of prior revenue laws with respect to any specified gift made during that calendar year is an amount, A, which bears the same ratio to B (the total gift tax paid for that calendar year) as C (the "amount of the gift", computed as described in this subdivision) bears to D (the total taxable gifts for the year, computed without deduction for the gift tax specific exemption under section 2521 or the corresponding provisions of prior revenue laws). Stated algebraically, the amount of the gift tax paid with respect to a gift equals:

$$\frac{\text{"Amount of the gift" (C)}}{\text{Total taxable gifts, plus specific exemption allowed (D)}} \times \text{Total gift tax paid (B)}$$

For purposes of the ratio stated in the preceding sentence, the "amount of the gift" referred to as factor "C" is the value of the gift reduced by any portion excluded or deducted under section 2503 (b) (annual exclusion), 2522 (charitable deduction), or 2523 (marital deduction) of the Code or the corresponding provisions of prior revenue laws. In making the computations described in this paragraph, the values to be used are those finally determined for purposes of the gift tax.

(iii) If a gift consists of more than one item of property, the gift tax paid with respect to each item shall be computed by allocating to each item a proportionate part of the gift tax paid with respect to the gift, computed in accordance with the provisions of this paragraph.

(2) For purposes of this paragraph, it is immaterial whether the gift tax is paid by the donor or the donee. Where more than one gift of a present interest in property is made to the same donee during a calendar year, the annual exclusion shall apply to the earliest of such gifts in point of time.

(3) Where the donor and his spouse elect under section 2513 or the corresponding provisions of prior law to have any gifts made by either of them considered as made one-half by each, the amount of gift tax paid with respect to such a gift is the sum of the amounts of tax (computed separately) paid with respect to each half of the gift by the donor and his spouse.

(4) The method described in section 1015(d)(2) and this paragraph for computing the amount of gift tax paid in respect of a gift may be illustrated by the following examples:

Example (1). Prior to 1959 H made no taxable gifts. On July 1, 1959, he made a gift to his wife, W, of land having a value for gift tax purposes of $60,000 and gave to his son, S, certain securities valued at $60,000. During the year 1959, H also contributed $5,000 in cash to a charitable organization described in section 2522. H filed a timely gift tax return for 1959 with respect to which he paid gift tax in the amount of $6,000, computed as follows:

Value of land given to W		$60,000	
Less: Annual exclusion	$3,000		
Marital deduction	30,000	33,000	
Included amount of gift			$27,000
Value of securities given to S		60,000	
Less: Annual exclusion		3,000	
Included amount of gift			57,000
Gift to charitable organization		5,000	
Less: Annual exclusion	3,000		
Charitable deduction	2,000	5,000	
Included amount of gift			None
Total included gifts			84,000
Less: Specific exemption allowed			30,000
Taxable gifts for 1959			54,000
Gift tax on $54,000			6,000

In determining the gift tax paid with respect to the land given to W, amount C of the ratio set forth in subparagraph (1)(ii) of this paragraph is $60,000, value of property given to W, less $33,000 (the sum of $3,000, the amount excluded under section 2503(b), and $30,000, the amount deducted under section 2523), or $27,000. Amount D of the ratio is $84,000 (the amount of taxable gifts, $54,000, plus the gift tax specific exemption, $30,000). The gift tax paid with respect to the land given to W is $1,928.57, computed as follows:

$$\frac{\$27,000\ (C)}{\$84,000\ (D)} \times \$6,000\ (B)$$

Example (2). On January 15, 1956, A made a gift to his nephew, N, of land valued at $86,000, and on June 30, 1956, gave N securities valued at $40,000. On July 1, 1956, A gave to his sister, S, $46,000 in cash. A and his wife, B, were married during the entire calendar year 1956. The amount of A's taxable gifts for prior years was zero although in arriving at that amount A had used in full the specific exemption authorized by section 2521. B did not make any gifts before 1956. A and B elected under section 2513 to have all gifts made by either during 1956 treated as made one-half by A and one-half by B. Pursuant to that election, A and B each filed a gift tax return for 1956. A paid gift tax of $11,325 and B paid gift tax of $5,250, computed as follows:

	A	B
Value of land given to N	$43,000	$43,000
Less: exclusion	3,000	3,000
Included amount of gift	40,000	40,000
Value of securities given to N	20,000	20,000
Less: exclusion	None	None
Included amount of gift	20,000	20,000
Cash gift to S	23,000	23,000
Less: exclusion	3,000	3,000
Included amount of gift	20,000	20,000
Total included gifts	80,000	80,000
Less: specific exemption	None	30,000
Taxable gifts for 1956	80,000	50,000
Gift tax for 1956	11,325	5,250

The amount of the gift tax paid by A with respect to the land given to N is computed as follows:

$$\frac{\$40,000\ (C)}{\$80,000\ (D)} \times \$11,325\ (B) = \$5,662.50$$

The amount of the gift tax paid by B with respect to the land given to N is computed as follows:

$$\frac{\$40,000\ (C)}{\$80,000\ (D)} \times \$5,250\ (B) = \$2,625$$

The amount of the gift tax paid with respect to the land is $5,662.50 plus $2,625, or $8,287.50. Computed in a similar manner, the amount of gift tax paid by A with respect to the securities given to N is $2,831.25, and the amount of gift tax paid by B with respect thereto is $1,312.50, or a total of $4,143.75.

(c) *Treatment as adjustment to basis.* Any increase in basis under section 1015(d) and this section shall, for purposes of section 1016(b) (relating to adjustments to a substituted basis), be treated as an adjustment under section 1016(a) to the basis of the donee's property to which such increase applies. See paragraph (p) of § 1.1016–5.

PAR. 5. Section 1.1016–5 is amended by adding a new paragraph at the end thereof to read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(p) *Gift tax paid on certain property acquired by gift.* Basis shall be adjusted by that amount of the gift tax paid in respect of property acquired by gift which, under section 1015(d), is an increase in the basis of such property.

[F.R. Doc. 63–12495; Filed, Dec. 2, 1963; 8:50 a.m.]

15379

Title 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER N—DANGEROUS CARGOES[1]

[CGFR 63–80]

PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

Miscellaneous Amendments

Pursuant to the notice of proposed rulemaking published in the FEDERAL REGISTER of February 2, 1963 (28 F.R. 1052–1058), and February 16, 1963 (28 F.R. 1510–1511) and the Merchant Marine Council Public Hearing Agenda dated March 25, 1963 (CG–249), the Merchant Marine Council held a public hearing on March 25, 1963 for the purpose of receiving comments, views and data. Item VIII f. contained proposed changes regarding dangerous cargoes and included a proposal designated "Detailed Regulations Governing Poisonous Articles—Radioactive Materials" (CG–249, pages 220–246). It was announced at the public hearing and in the Federal Register document published in the FEDERAL REGISTER of May 30, 1963 (28 F.R. 5378), that final actions with respect to these proposals were deferred so that the requirements of the Interstate Commerce Commission and the Coast Guard will be in agreement when published. The ICC notice of proposed rulemaking on this subject was published in the FEDERAL REGISTER on April 19, 1963 (28 F.R. 3876–3888), ICC Change Notice No. 58, Docket No. 3666, service date July 12, 1963. All comments, views and data that have been received are now being evaluated and it may be some time before agreement may be reached regarding these proposals. However, it is deemed necessary to recognize and prescribe requirements regarding fissile materials and a new section, designated 46 CFR 146.25–21, is added by this document. This proposal was originally set forth in the Public Hearing Agenda (CG–249, pages 222, 227) as 46 CFR 146.25–20(b), and 146.25–27. No comments were received by the Coast Guard or ICC pertaining to these requirements for fissile material. In view of the fact that fissile materials present a criticality hazard that is not recognized by the present regulations and a serious potential hazard exists as more of these materials are being transported by water, it is deemed necessary and vital to safety to publish these fissile material regulations which recognize this hazard and contain requirements designed to prevent accidental criticality.

The other changes contained in this document are editorial in nature. The title for the subchapter is changed to indicate the character of the regulations in 46 CFR Parts 146 and 147. Subpart numbers are assigned to the various subparts in order to conform to the format used in this chapter of the Code of Federal Regulations. Chart "A" in 46 CFR 126.29–99 is changed to correct a typographical error. This document contains no material based on ICC Change Orders.

By virtue of the authority vested in me as Commandant United States Coast Guard, by Treasury Department Orders 120 dated July 31, 1950 (15 F.R. 6521), 167–14 dated November 26, 1954 (19 F.R. 8026), and CGFR 56–28 dated July 24, 1956 (21 F.R. 5659), to promulgate regulations in accordance with the statutes cited with the regulations below, the following amendments are prescribed and shall become effective on and after the date of publication of this document in the FEDERAL REGISTER:

1. The heading for Subchapter N is changed to "Subchapter N—Dangerous Cargoes," as set forth above.

2. The subpart headings are amended by assigning numbers as follows:

Subpart 146.01—Preface.
Subpart 146.02—General Regulations.
Subpart 146.03—Definitions of Words and Terms Contained Within the Regulations in This Subchapter.
Subpart 146.04—List of Explosives or Other Dangerous Articles Containing the Shipping Name or Description of Articles Subject to the Regulations in This Subchapter.
Subpart 146.05—Shipper's Requirements Re: Packing, Marking, Labeling and Shipping Papers.
Subpart 146.06—Vessel's Requirements Re: Acceptance, Handling, Stowage, Etc.
Subpart 146.07—Railroad Vehicles, Highway Vehicles, Vans or Portable Containers Loaded With Explosives or Other Dangerous Articles and Transported on Board Ocean Vessels.
Subpart 146.08—Railroad or Highway Vehicles Loaded With Dangerous Substances and Transported on Board Vessels.
Subpart 146.09—Cargo Handling and Stowage Devices, U.S. Coast Guard Container Specifications.
Subpart 146.10—Barges.
Subpart 146.20—Detailed Regulations Governing Explosives.
Subpart 146.21—Detailed Regulations Governing Inflammable Liquids.
Subpart 146.22—Detailed Regulations Governing Inflammable Solids and Oxidizing Materials.
Subpart 146.23—Detailed Regulations Governing Corrosive Liquids.
Subpart 146.24—Detailed Regulations Governing Compressed Gases.
Subpart 146.25—Detailed Regulations Governing Poisonous Articles.
Subpart 146.26—Detailed Regulations Governing Combustible Liquids.
Subpart 146.27—Detailed Regulations Governing Hazardous Articles.
Subpart 146.28—Temporary Amendments to Regulations.
Subpart 146.29—Detailed Regulations Governing the Transportation of Military Explosives and Hazardous Munitions on Board Vessels.

3. Subpart 146.25—Detailed Regulations Governing Poisonous Articles, is amended by inserting after § 146.25–20 a new § 146.25–21 reading as follows:

§ 146.25–21 Fissile materials.

(a) For the purpose of the regulations in this part "fissile materials" shall mean Plutonium 239, Plutonium 241, Uranium 233, Uranium 235 and any material artificially enriched with any of these four nuclides.

(b) When more than 15 grams of Plutonium 239, Plutonium 241, Uranium 233, Uranium 235 or any combination of these four nuclides are packed in a single container the shipment shall be made in containers authorized by the Commandant, U.S. Coast Guard and the packaging shall also be approved by and each shipment shall be made in accordance with procedures approved by the U.S. Atomic Energy Commission.

(c) For each shipment of fissile materials in excess of the quantities given in paragraph (b) of this section, the shipper shall supply the vessel with a certificate issued and signed by the shipper or his duly authorized representative as follows:

This is to certify that this package contains fissile (special nuclear) material and has been prepared for shipment in accordance with the packaging requirements and limitations established by the U.S. Atomic Energy Commission as conditions of AEC License SNM No. _____ (or the terms of Contract No. _____). This type of packaging and the contents thereof have been approved as (insert the appropriate class according to those listed below) and is safe for transport subject to the following conditions:

(List all conditions. If none, insert "None.")

Class I package____ Safe from neutron interaction in any arrangement.
Class II package___ Nuclearly safe in any arrangement in limited numbers.
Class III package__ Nuclearly safe under special arrangement.

(d) For Class II shipments, not more than 40 radiation units may be stowed in any one hold. Not more than two Class II shipments may be carried at any one time unless authorized by the Commandant, U.S. Coast Guard.

(e) For Class III shipments, special authority must be obtained from the Commandant, U.S. Coast Guard.

(f) Each outside container, unless exempt, must be labeled with a properly executed label as described in § 146.05–17(q), except that the number of radiation units to be entered on the label shall be determined in accordance with procedures approved by the Atomic Energy Commission.

(R.S. 4405, as amended, 4462, as amended, 4472, as amended; 46 U.S.C. 375, 416, 170. Interpret or apply sec. 3, 68 Stat. 675; 50 U.S.C. 198, E.O. 10402, 17 F.R. 9917, 3 CFR 1952 Supp.)

§ 146.29–99 [Amended]

4. In Subpart 146.29—Detailed Regulations Governing the Transportation of Military Explosives and Hazardous Munitions on Board Vessels, § 146.29–99 *Explosives admixture charts*, Chart "A" in § 146.29–99 is amended by changing

[1] Title as amended by this document.

the circular symbol to the letter "D" in the II–J horizontal row opposite II–G, vertical column.

(R.S. 4405, as amended, 4462, as amended, 4472, as amended; 46 U.S.C. 375, 416, 170. Interpret or apply sec. 3, 68 Stat. 675; 50 U.S.C. 198, E.O. 10402, 17 F.R. 9917, 3 CFR 1952 Supp.)

Dated: November 27, 1963.

[SEAL] D. McG. MORRISON,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 63–12497; Filed, Dec. 2, 1963; 8:51 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3275]

[Anchorage 032306]

ALASKA

Reserving Public Lands for Protection and Preservation of Their Archeological and Historical Values; Revoking Public Land Order No. 1459 of August 6, 1957

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved under the jurisdiction of the Department of the Interior for protection and preservation of their archeological and historical values:

KACHEMAK BAY AREA

Yukon Island

Containing approximately 700 acres.

2. Public Land Order No. 1459 of August 6, 1957, which withdrew a part of the lands described in paragraph 1, hereof, for protection and preservation of archeological and historical values, is hereby revoked.

JOHN A. CARVER, Jr.,
Assistant Secretary
of the Interior.

NOVEMBER 26, 1963.

[F.R. Doc. 63–12478; Filed, Dec. 2, 1963; 8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 0—COMMISSION ORGANIZATION

Office of the Bureau Chief

The Commission, having under consideration the amendment of § 0.94(c) of its rules; and

It appearing, that the Field Office in St. Louis, Missouri, has been relocated from its former address to Room 906, 114 Market Street, and

It further appearing, that the amendment adopted herein pertains to Commission management and organization and that such amendment is editorial in nature, and hence that compliance with the requirements of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing, that the amendment adopted herein is issued pursuant to authority contained in section 4(i), 5(b), and 303(r) of the Communications Act of 1934, as amended, and § 0.261(a) of the Commission's rules.

It is ordered, This 25th day of November 1963, that effective November 25, 1963, § 0.94 of the Commission's rules is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: November 27, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

Section 0.94(c) is amended to read as follows:

§ 0.94 Office of the Bureau Chief.

* * * * *

(c) Office of Field Coordinator, which is responsible for coordinating the work of the Common Carrier Bureau Field Offices. The field offices are located at 90 Church Street, New York, New York, 10007; 180 New Montgomery Street, San Francisco, California, 94105; and Room 906, 114 Market Street, St. Louis, Missouri, 63101. These offices are responsible for conducting investigations and studies, as assigned by the Office of the Chief of the Bureau, to assure that there is adherence to the Communications Act and the Commission's rules and regulations. These offices also represent the Commission in contacts with the public and the carriers.

* * * * *

[F.R. Doc. 63–12501; Filed, Dec. 2, 1963; 8:51 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1—GENERAL RULES OF PRACTICE

Motor Carriers, Brokers, and Freight Forwarders; Filing of Applications

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 29th day of November A.D. 1963:

It appearing, that the matter of special rules governing notice of filing of applications by motor carriers of property or passengers under sections 206 (except section 206(a)(6) relating to Certificates of Registration) and 209, by brokers of motor transportation under section 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 410 of the Interstate Commerce Act, and certain other procedural matters with respect thereto being under consideration:

It is ordered, That the following special rules be, and they are hereby, prescribed:

§ 1.247 Special rules governing notice of filing of applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209, and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 410 of the Interstate Commerce Act, and certain other procedural matters with respect thereto.

(a) *Scope and applicability of special rules*—(1) *Scope.* These special rules govern the filing and handling pursuant to the provisions of the Interstate Commerce Act of (i) applications for certificates, permits, and licenses respecting the transportation of property or passengers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209, and 211, (ii) applications for certificates, permits, and exemptions respecting the water transportation of property or passengers under sections 302(e), 303, and 309, and (iii) applications for permits to operate as freight forwarders and for certificates of abandonment under section 410. Except as otherwise herein provided, the General Rules of Practice shall apply.

(2) *Applicability.* These special rules shall apply to all applications enumerated in subparagraph (1) of this paragraph and filed with the Commission on and after January 1, 1964, and to such of those applications filed prior to that time as the Commission may designate by appropriate publication in the FEDERAL REGISTER.

(b) *Applications*—(1) *Form and content.* An application filed with the Commission under these special rules shall be prepared in accord with and contain the information called for in the form of application prescribed by the Commission or in instructions which may have been issued by the Commission with respect to the filing of such an application.

(2) *Copies and service.* Copies of an application filed under these special rules shall be furnished in such number and shall be filed and served in the manner and upon the persons specified in the form or instructions, except that service thereof need not be made upon competing carriers.

(3) *Requests for handling applications without oral hearing.* An applicant who believes its application is susceptible of handling without oral hearing may request such handling when the application is filed. If such a request is made at that time, the applicant shall submit with its application original verified statements of the facts to which its witnesses would testify at an oral hearing if one were held, together with six copies